I. Introduction

For me, "LatCrit theory" started with our exciting and sometimes conflicting discourse at the LatCrit I conference in La Jolla, California in May 1996 - in particular after the outburst of female energy spontaneously created by the "Latinas talking circle." n1 LatCrit I brought together about seventy-five teachers and scholars, predominately Latina and Latino, desirous of exploring the concepts and premises for engaging in a new brand of "outsider scholarship." n2 Having had the privilege of being at that first gathering - which had as a goal simply to start a discussion about what it would mean to engage in Latina/o Critical Legal Theory - I now feel even more privileged to be writing this foreword at a moment that feels important in the history of liberation movements. As I write, I am enjoying looking at a copy of a recent news photograph of a march against the resegregation of our public universities n3 that took place on January 8, 1998, in San Francisco, and was led by an activist group of law professors. n4 Most of the people pictured in the photo [*3] of this march are now friends and colleagues I met for the first time at LatCrit I. Most importantly, as I look at the photo and think back on the first gathering of scholars who began that conversation about the special meaning the term "diversity" might have to Latina and Latino scholars, I am aware of the different racial, ethnic, sexual and gendered identities represented by each person in the photograph. Heading the march and shouting slogans in support of diversity and affirmative action at the side of African-American Mayor of San Francisco Willie Brown are five law professors - two women, a white and a Latina, and three men, one a gay Latino, an African-American and an Asian-American.

These different faces and identities in the photo took me back not only to the excitement of planning for and being in a historic civil rights march, but also to the hotel conference room where I sat in May 1996 with some of these very people, LatCrit colleagues, and to the range of feelings I had then as I witnessed a multiracial/multiethnic spectrum of identities forging a new scholarship movement. Back then I knew at best a handful of people, yet unlike so many other conferences in my professional life, I didn't feel alone. For once, I didn't stand out in my isolation as a brown
woman at a professional conference. Rather, it was the Anglo whites who got to be the minority among women and men whose names and faces were stirring in me ancient memories of comfort, and the feelings associated with familia. As brilliant speakers presented works in progress, I felt proud to be "Latina," a woman of color. Occasionally my attention wandered to mental connections between Spanish surnames, bits of history of European conquest and diaspora in the "Americas" and the Caribbean, and faces that sometimes matched and often didn't fit this nation's stereotyped images of "Hispanics." n5 I knew I was witnessing something very important as [*4] I visually appreciated the racial, ethnic, and linguistic diversity I had always known existed among Latina/o Americans we know as Mexicans, "Chicanos," n6 "Tejanos," n7 Cubanos, Puerto Ricans, "Newyoricans," n8 Guatemaltecos, Puerto Ricans, "Newyoricans," n8 Guatemaltecos, Nicaragua, Salvadorans, Venezolanos, Colombians, Paraguayans, Uruguayans, Hondurans, Bolivians, and so on. Of course, the room and the speakers were not only Latina/os. Asian and African-American scholars noted for their work in Critical Race Theory had been invited to explore the concept of "Latina/o Critical Legal Theory." Yet the overwhelming Latina/o presence made me feel warm and connected, especially when I heard the occasional Spanish term or phrase, or reference to a bit of humorous cultural insiderness. n9 I was like the happy soul who has just discovered a long lost relative.

At this gathering in La Jolla we called LatCrit I, the attendees struggled with the theoretical task associated with confronting a Latina/o politics of identity as scholars engaged in critical analysis of the law's impact on Latina/os in the U.S. and elsewhere. Gazing around the room I saw an awesome gathering of mostly law professors, sharing an interest in critical theory, and personally differing from each other in their identities based on race, ethnicity, color, language, ancestry, class, religion, age, gender, sexual orientation, professional status, and so on. Many in the room had already participated in critical legal theory, which centered on issues of race, ethnicity, sex, and sexual orientation. Most of the individuals in the room were Latina/os, while others were decidedly not. In time even the term "Latina/o" would become the source of a powerful and challenging substantive and political critique. n10 From this web of [*5] difference a discourse was initiated on what it might mean to theorize about the shared multiplicity of difference in that room; more specifically, the commonalities of the experience of our marginalization as Latina/os in relation to the following: the white male legal academy, the established race, feminist, and Queer crit movements, and global community. The vast diversity before us generated excitement for a bold agenda - to explore the relationship of Latina/os to other minorities in the legal profession, and to forge a scholarship movement relentlessly committed to the theory and practice of diversity; one that would empower and support all of us in the deconstruction of the sources of our marginalized existence.

In Part II of this Foreword, which I have subtitled March! in the spirit of resistance my LatCrit colleagues and I recently demonstrated in San Francisco, I explore one of the primary questions we struggled with at LatCrit I and continued to explore in LatCrit II for its significance to our work as critical legal scholars - the question of our identities, or "who are we?" Examining LatCrit's commitment to be multiracial and multigendered, this part explores how LatCrit has engendered great possibilities for connection and interconnections, as well as tension, self-education and healing. I address the hope, promise and challenge for community among scholars whose identities intersect, minimally, across race, color, ethnicity, national origin, gender, class, religion and sexuality by offering some observations of lessons I have gained from the experiences of LatCrit I and II, both as an attendee and as the member of one Planning Committee. Part II also examines some of the strong departures between LatCrit and Critical Race Theory (CRT) by illustrating the interplay of gender, culture and identity politics at each LatCrit conference to date and by advocating a few reasons why Latina law professors need to strengthen their ties to each other.

In Part III, I comment on the three clusters of scholarship that were produced for the LatCrit II Symposium and briefly preface the discussion of Cluster Three with a personal commentary on religion as an essential ingredient of cultural analyses in Latina/o Critical Legal Theory.

Finally, Part IV briefly comments on the importance of connecting our scholarship movement to the pressing contemporary struggle to preserve the concepts of diversity and affirmative action in legal education, and encourages LatCrit scholars to explore critical pedagogy as an extension of their work in critical theory. LatCrit scholars were critical to the organizing of the Society of American Law Teachers (SALT) C.A.R.E. march by law professors against the re-segregation of our law schools. Their strength and commitment to promote activism in scholarship and deed is but one [*6] of the many inspirations generated by our "LatCrit movement" which is marching forward in the midst of revolutionary times for the nation as a whole. I conclude with an example of a critically based teaching project bringing theory
and practice together that was inspired by my involvement with LatCrit theory.

II. Quienes Somos: Who Are We?

A. A LatCrit I Retrospective: Or, I Wasn't In Puerto Rico but I Went to La Jolla

Although the 1996 conference at La Jolla, California had formalized the inquiry of what it means to engage in a politics of identity centered on the Latina/o experience, in reality, some of that conversation had been initiated by the Latina/o law professors who gathered at the 1995 annual Hispanic National Bar Association Conference in Puerto Rico. In fact, "who are we?" served as the question for plenary discussion on the first day of LatCrit II. As others and I learned, a late night gathering of professors in Puerto Rico shared stories filled with feelings of hurt, confusion and abandonment felt at CRT gatherings - gatherings that made no room for the experience and insights of Latina/os in the law. By the evening's end a venting of feelings had inspired a conference, and a vow among the organizers to assure that the panels and audience that would become LatCrit would be relentlessly characterized in substance and identity as inclusive and diverse. In my opening keynote at LatCrit II, I expressed the opinion to any newcomers in the audience that LatCrit should not be viewed as a gathering of "experts" on the established meaning of "LatCrit theory." I felt it important that newcomers know that many of us are still learning what it means to engage in LatCrit theory by simply putting forth the hard questions about identity. I also felt it important that newcomers to this emergent movement feel welcomed. I could imagine what it might feel like for one who had not only been absent from the formative events in Puerto Rico, but possibly had been absent from many more of the "critical race" gatherings leading up to LatCrit I or II. I relate these thoughts about where we've been to offer future LatCrit scholars and the readers of this symposium a small opportunity for connection - the support from one who was very alienated from her own "Latina-ness," as I have explained in a recent writing. n11 My experiences as an unwelcome Latina lesbian in a university with a bad history on the hiring and retention of minorities had sapped me of the strength it would take to reach out to others whom, like me, were struggling for acceptance in their predominately white and male institutions. Yet, the spirit of inclusion I felt at LatCrit I encouraged me to reveal to my new colleagues the multiple reasons that underlined my feelings of alienation when I found myself with other Latina/o professors. I felt defeated by a lone battle I'd had trying to fill the "objective" criteria expected of untenured professors. I was tired of attending conferences where I was too often the token double or triple minority, and therefore I had a tendency not to see conferences as important to my professional development. In addition to all of this, I projected on to my colleagues the homophobic Latino values I had been exposed to since my youth and assumed I would be unwelcome as an out lesbian writing mostly about Queer topics as opposed to "Latina/o issues." n12

There is another reason why an individual might feel disconnected from other Latina/os in the legal academy and wonder whether the question "who are we?" even applies to them. This reason is embedded in the various external forces, the systemic discrimination, which brings home the marginalization of Latina/os and other racial, ethnic or sexual minority law teachers. Let us face it. Those who choose to "come out" as critical scholars, including LatCrits, take huge risks, especially during these exceptionally revolutionary times when the infamy of individuals like Lino Graglia signal the loss of widespread cultural support for concepts like diversity and affirmative action. n13 Many of these courageous souls have centered "race," gender and sexuality," n14 and "language and ethnicity," n15 in critical analyses of the law and have challenged established forms of scholarship viewed as the singular "normative" and "legitimate" model by the mainstream academy. n16 The even bolder do so while still on the tenure track. As indebted as we are to our Abuelito, Richard Delgado, for his infamous essay The Imperial Scholar, which exposed the hypocrisy of a so-called progressive civil rights scholarship dominated by white men who ignored the writings of racial minority intellectuals, we know that even Delgado wrote only after he was comfortably situated with tenure. n17 The even bolder do so while still on the tenure track. As indebted as we are to our Abuelito, Richard Delgado, for his infamous essay The Imperial Scholar, which exposed the hypocrisy of a so-called progressive civil rights scholarship dominated by white men who ignored the writings of racial minority intellectuals, we know that even Delgado wrote only after he was comfortably situated with tenure. n18 Critical Race Theory (CRT), with its loose and fragile connections to Critical Legal Studies (CLS), n19 permanently upset those Pdignms of thought and analysis, including the conventional advice that one should wait until after tenure to expose one's radical views. n20 It was a tiny moment in history when CRT was popular and supported by progressive and tenured white professors in the academy who recognized the emerging "stars" in critical race scholarship movement, and even actively recruited minority teaching candidates for their potential as critical race scholars. In that wave, the number of Latina/os in law teaching gradually rose, n21 and the scholarship invoking theories like intersectionality n22 and Queer n25 or lesbian n26 legal theory or Pdignms in writing like the personal narrative n27 proliferated - but only for a moment.
LatCrit I came at a moment when the popularity of CRT teachers and scholars was diminishing and the support for concepts like affirmative action was being actively cut back. Writing models viewed as standard in critical scholarship, whether racial or feminist-like the personal narrative - were now being questioned and attacked. But another phenomenon, one not connected to external attacks on minorities, also urged the creation of this new critical theory movement which vowed to have a membership as diverse as one could imagine the non-white minorities in the academy to be. That was the glaring absence of a strong community, a critical mass of scholars centered around CRT. The people who had talked late into the night in Puerto Rico were in search of collegiality and feedback, intellectual energy and support, things they obviously missed in their home institutions since they were often the only racial minority on the faculty, but which they also lacked in the places where they had expected to receive greater support - at CRT workshops. A typical complaint was that CRT scholarship had managed to produce a growing body of literature focused only on the African-American experience, while the absence of discourse on Latina/o issues, or issues of the intersections between race and gender, sexuality or class, and the differences and commonalities shared by each group was obvious. Thus the question of "who are we?" has been critical to the forging of this community we call today "LatCrit." For who we are is a diverse group of people, many of whom have long been involved in CRT, others who helped forge the Asian-American scholarship movement, some who like myself, have struggled to find a role as Latina/os among feminist and Queer theorists. Many, many Latina/os have wanted and needed a community of colleagues among whom they can develop new ideas and insights about how the law, legal institutions and white male supremacy marginalize the multiplicity of Latina/o identity and experience everywhere. The "Latina/o" experience, as a critical legal theory movement then, provides an opportunity to center at least one of the cultural values that is essential to many Latina/os - that of comunidad y familia. Not, however, without the risk of being misunderstood as an identity category in legal thought and scholarship.

B. On to LatCrit II and the Material Experiences of Diversity: Un Movimiento Tumultuoso

One of the strengths so far, of this growing movement of "LatCrit Scholars" is our coming together as diverse people with diverse agendas trying to define a role for ourselves in the conservative academic profession of the law. We have gathered as tenured professors, tenure-track professors, clinical professors, interdisciplinary scholars and even students. Diversity, of course, is more than theory, it is a practice; a practice of our differences in identities, in ideas about LatCrit theory, in our experiences as lawyers and law teachers and scholars - and our reasons for becoming involved, or not, in this scholarship movement. The commonality we share is in our identities as law professionals who want a community that will support our scholarship interests and our struggles within our home institutions. At the most basic level, our conferences bring together into an intense three-day period a multiplicity of personal, intellectual and political agendas - agendas that could equally complement each other or conflict and collide. Mutual engagement therefore, in the name of comunidad, entails the personal risk of being questioned on our motives for a myriad of thoughts, attitudes, behaviors and agendas we may consciously or unconsciously manifest in the short period of intellectual discourse at a conference.

A commitment to the practice of diversity should have us recognize the right of every LatCrit conference attendee to feel safe knowing that their identity, views and agendas may differ from each other, in some cases very strongly. Sometimes that awareness may cost us the experience of moving momentarily out of our emotional comfort zones. This message - that the multiplicity of identities and agendas we have as LatCrit scholars could potentially collide at future conferences - was understood well when the women at LatCrit I vocalized their concern that the men and a "male" approach to doing things was setting the wrong tone for starting out as a community. For whatever reason, the setup of the panels, the prominent role of mostly male speakers or the choices of topics left some of the Latinas in attendance feeling unsafe and disconnected to the emergent LatCrit scholarship movement. The lessons from LatCrit I, that there needed to be a greater sensitivity to gender was honored by an opening plenary for LatCrit II which focused on Latinas and the Law as its theme. At a methodological level, the contributions of a gendered consciousness in the planning of the second gathering also produced a conference discussion format aimed at the enhancement of community - el circulo, or the "talking circle." Of course, it is axiomatic to the consciousness raising experience for an individual to be forced out of their comfort zone. Diversity then, may produce conflict, and conflict may generate discomfort, but it also produces energy and life for the community.

It is not coincidental that the spontaneous moment at LatCrit I which gave birth to the Latinas' talking circle - that had grown out of the rising swell of female
discomfort with the proceedings - produced a critical gender consciousness-raising energy. That energy in turn fed a critical analysis by some decidedly feminist members of the LatCrit II Planning Committee concerning the nature, order and even method of topic presentation for the second annual gathering. My opening keynote described the "talking circle" as a probably unfamiliar method to most people, but one that some of us had used and trusted as a way to minimize the masculinized and cold environment produced by standard conference set-ups - where a panel of a few "on high" speak to the lowly "audience below." Or, even produced by standardized teaching styles, such as the classic Socratic method inherited from the white male academy. Having speakers and listeners at LatCrit II sit on the same physical level in the form of a circle was a very anti-patriarchal and anti-hierarchical method. But, it was also a method that signaled the importance of the metaphor of the circle as drawing us in, of being included and encouraging us to be en comunidad. Drawn from the example of talking circles common among Native-American tribes, the image of the circle evokes support, community, warmth and coming together. Or, as Native-American feminist Paula Gunn Allen has described it, it is like life - we all have "[our] place in it." n39

1. Multiplicity of Identities: Multiplicity of Agendas

At an organizational level, LatCrit's future challenges will be in maintaining a community where identities and agendas, both personal and political, can be communicated, understood and accepted. We have had experiences so far that promise community but that also encourage a strong commitment to conflict resolution. At LatCrit I, for example, I recall a break on the first day of panels when a female attendee tried to get the hotel staff to stop serving grapes as part of the refreshments. A seemingly innocuous gesture was greatly imbued with significance, but only to those who understood the irony of starting a discourse on the marginalization of Latina/o interests in American culture and law, at a hotel in California - the historic setting where this nation witnessed the Seventies' boycott against the purchase and consumption of grapes led by labor hero Cesar Chavez. n40 At least to the Latina/o of Mexican descent, the serving of grapes, symbolic of the oppression of Mexican migrant farmworkers in the Southwest, at a conference addressing discrimination against Latina/o, seemed very ironic and offensive. To other attendees, however, the grapes would have meant little or nothing at all, for they had no basis from which to relate to the historic boycott. Their sense of a Latina/o identity rested on far different regions of the U.S. and patterns of marginalization and discrimination that differed greatly from that of Mexicans in the Southwest and/or immigrant agricultural laborers. The grapes were never removed. This story illustrates one of the initial problems faced by a community of scholars presented with the question of "who we are" as Latina/os. It illustrates the problem with assuming any homogeneity in the interests or experiences of those we call or who self-identify as "Latina/o." It signals the potential for our diverse interests, experiences and identities to become the source of miscommunication, misunderstanding and conflict.

In fact, LatCrit II had some conflicts which centered on everything from the personal to the political, and from the personal which became political. n41 The answer to "who is Latina/o" is ultimately a deeply personalized set of experiences, some we share in common with other Latina/os based on race, color, ethnicity, language, class, regional, educational and moral experiences, and some of which can be sharply different and potentially conflicting. In these formative years of creating community, the diversity of who we are, and the conflicts we have shown ourselves to be capable of should encourage us to commit not only to the theory and practice of conflict resolution but also to the values of honesty and compassion in our dealings with each other. One may legitimately ask: why is this important at all? Because as trainers of human rights organizers in conflict-ridden parts of the world have learned, it takes systematic work on ourselves and on the oppressor that lives inside of us to learn how to confront the elements of racist, homophobic, classist, and sexist societies. n42 I am alluding to the need for taking our theorizing about systemic discrimination to the praxis level. This means collectively demanding of ourselves that we find appropriate tools for enhancing our coalitional effectiveness - methods and practices designed to help us root out those unconscious oppressive beliefs and attitudes which endanger our communal goals by dividing us against each other. That risk is enhanced when we share physical space with our colleagues, who are also oppressed, but whose sense of what it means to be victimized may be different from our own experience. To speak of the need for such methods and tools is to assume that the societal and individualized impact of racism, or sexism, or homophobia, or classism, and other "isms" is great and deep. n43 So great that no one escapes its impact. This means that as survivors of cultural oppressions we often learn to bury the pain of our victimization in our unconscious minds. n44 But when we are in safe emotional spaces for feeling that victimization, like the setting of a LatCrit conference, supposedly among like-minded souls, we are more likely to act upon the feeling "I have been victimized."
We may even find ourselves doing this among others who may or may not have the same sense of what it means to be a victim of discrimination. n45

I cannot help but see LatCrit as exciting for the critical awareness of discrimination and marginalization we share with each other in our writings and conferences; but I also see it as risky for the sharp feelings like anger, hurt, joy, and the reflections on one's buried pain and opportunities for healing it may trigger. So far, LatCrit has managed to create the space to engage in left brain (analytical) work that can trigger right brain (emotional) responses. But, so far, we have not implemented methods for consistently addressing the possibility for tangible emotional and uncontrollable experiences generated by the intellectual engagement.

For example, on the opening day of LatCrit II, one of our plenary Latina speakers whose life experiences as a migrant farmworker's daughter has influenced her work as an expert on agricultural law, unexpectedly accessed memories filled with hurt and pain when Antonia Castañeda - who has interviewed Tejana farmworkers n46 - offered to help make the point about the oppression of migrant farmworkers by pulling out of a bag a short-handled hoe she [16] had brought for display. n47 The speaker was momentarily moved to tears and speechlessness at the sight of an implement that had evoked painful memories of harshness in work and the quality of life endured by her parents, siblings and herself. For several minutes there was hardly a dry eye in the room. Another incident occurred on the third day of LatCrit II, when a volatile discussion and similarly unexpected hurtful memories of how Catholicism had contributed to a period of suicidal depression for a gay hermano (brother), were triggered by a non-Latina Buddhist attendee's criticism of the Catholic religious icons that filled the room where we met. These scenarios certainly encourage us to think that as largely "left brain" n48 people engaging in critical scholarship which evokes "right brain" n49 responses we don't always have the answers, the tools and experience for knowing how to create safe space for critical discourse. Thus, many of us hope that LatCrit will differ from CRT by attending early on to the risks of trying to create community without paying attention to the problems in relationships that can destroy community. Many share the collective hope that ten years from now we will be large and expansive in numbers and not nearly defunct because our identity politics collapsed under the weight of personal anger, hurts, and feelings of disconnection and disillusionment. The fact is, our personal and political agendas will be entwined in LatCrit as a community and as an intellectual engagement. This is both risky and exciting. Our developing community embraces scholars who strongly advocate coalitional politics n50 in these revolutionary political times of backlash and retrenchment on values [17] like diversity in legal education. Yet we all know that the term "coalition" implies diverse communities made up of diverse individuals, not splintered groups with fractious individuals and identities that can't mount a fight against the real oppressors because they've forgotten that "we are all part of one another." n51

2. Practicing Diversity for the Sake of Community: It Soon "Becomes a Part of You" n52

Of course, conflict resolution is more than a theory. Like the diversity that occasions conflict, conflict resolution is a practice that takes practice. As we meet each other and hear our voices at our conferences, we may encounter unexpected sources for expanding our ability to identify, tolerate and/or accept differences. In this sense, harmony may come only from knowing that we support the expression of our dissonance, in voice, attitudes, experience, commitment, and ideas about how to sustain ourselves as a viable scholarship movement.

A commitment to conflict resolution may force us to consider a discourse on principles for staying in community even as we experience the praxis n53 side of our theories in the very company of our colleagues. If indeed our end goal is to have community, then we must commit to not walking away when conflict arises, to not personalizing too much our individual and communal mistakes in judgment, to being honest and compassionate with each other in our confrontations, and to trusting in the community's support for continued hope and healing. As a powerful spokesperson for coalitional politics once said, to stand together is going to be hard. Our movement is composed of all kinds of groups and all kinds of individuals. It is certain that many of us will make all kinds of mistakes. It will become very tempting to wish that this group or that group, this individual or that individual were simply not among us. n54

[18] Such models of communal, honest, patient, trusting confrontation with difference have been identified by feminist cultural theorist Riane Eisler as essential to saving our world from the unbridled cruelty of social values which unconsciously perpetuate masculinized values of patriarchy, like aggression and competition rather than partnership and support. n55 But as I noted in my keynote for LatCrit II, I believe the concept of LatCrit is infused with feminist method by appealing to a scholarship movement which encourages community, activism and
dreams of social justice for ourselves and for the marginalized person everywhere.

3. Mujeres Encolerizadas: Latina Law Professors Celebrating Our Gender-Based Differences

At LatCrit I, a spontaneously created Latinas talking circle forced upon the conferees a painful reality - of how progressive scholars can be the unwitting victims of their own internalized sexism. On day two, an impassioned Margaret Montoya invited the Latinas to caucus in a gender consciousness raising session. n56 That evening we gathered on a patio of the hotel in La Jolla, California. Some of us were adoloridas y encolerizadas - hurt and angry women. I remember looking out on a dozen or so women's faces, with shades of skin and hair color both lighter and darker than my own olive complexion and dark brown hair, and heard about the many paths we had taken from law school, to law practice, to teaching and to balancing personal lives with tenure battles. I understood then the meaning of having a consciousness over such intersecting factors as race, ethnicity, skin color, language, sexuality, class and so on. In this empowering session, some of us voiced for the first time in the company of scholars - with whom we could identify - some of the painful experiences we had had or were still enduring in our institutions. We understood in each other's stories how vulnerable and isolated we often felt among our mostly Anglo white colleagues, whether male or female. In our shared pain and tears, we saw our differences as women, teachers, clinicians and professors, tenured and untenured. The energy shift that grew out of the Latinas' talking circle, and that produced an important experience in consciousness-raising, also helped some of us access that significant question for LatCrit discourse centering on "Who Are We, and Where Are We as Latinas?" Shortly after LatCrit I, the progressive legal community lost a sister colleague, Trina Grillo, n57 [*19] to the ravages of cancer, and a few people, heartened by the energy of LatCrit I talked of planning a Latinas and the Law Conference, maybe to honor Trina Grillo as a Latina critical scholar. The discussions focused on the need for creating a sense of community among Latina law professors despite our "forty-plus" in number throughout the legal academy. n58 Somehow Trina's death and the spirit of LatCrit I and the talking circle had opened our eyes to the need for connection and community with each other as progressive, feminista and Latina law professors.

Sadly, the Latinas and the Law Conference never materialized. I, for one, have not given up the dream that we will one day have a Latinas and the Law Conference inspired by the vision of strengthening our ties to women of color everywhere. I imagine workshops, panels and the production of a massive bibliography which examines the linkages between law, policy, the socio-economic status of Latinas and the gender role expectations imposed upon women by Latinismo - the specific gendered values for women in Latin culture, values which in some contexts render us politically useless. As one who teaches and writes about women's and minority issues with a historical perspective, I am frequently obsessed with a gnawing wonder as to why my own identity, as a woman of an ethnic group which has been critical to the labor and economic history of this country is so absent in American scholarly literature? What else, beyond the obvious history of race relations in this country, explains our drastically low representation in academia, law, business and politics? Where do we begin to unravel the reasons for the total void in women's history about the Latinas of our past who were noted for their sharp intellect, wit and quest for knowledge? Why don't more of us know that Latina women's history has people in it like the seventeenth century's Mexican nun Sor Juana Inez de la Cruz - whose brilliance might have never been recognized had it not been, ironically, for her defiance of the Church's position against a woman's right to education and intellectual pursuit? n59 Why is it that the model image for Latinas is most closely aligned with the motherly, subservient role of the Virgen Maria and not that of a passionate thinker and writer like Sor Juana Inez? n60 There is obviously a historical puzzle here to piece together, about when the history of [*20] men and that of women in our Latino cultures conspired to produce the systematic means for assuring women's enduring second-class status in relation to men. Yet, strong women, of all classes and occupations are a part of our unexamined past. But we don't know more about them, about the ways they fought institutionalized oppression, and we haven't generated the collective urge to reconstruct the evidence of our female intellectual and activist heritage. n61 Of course, before we are inspired to create this collective urge we have to confront some painful realities about the value systems that deeply influence our lives, more or less, depending upon our class, education and moral upbringing - and obviously depending on the nuanced variations of the different cultures we represent, such as Puerto Rican, Cuban, Mexican, etc. We are confronted with the daunting task of deconstructing the term "Latinas," which itself comprises a very diverse social group. This diversity arises, minimally, from such factors as culture and family dynamics, color, class, and racial diversity, language differences, citizenship and/or resident status, education, sexuality and life occupation. n62 To
speak of the Latina is to know that we are undocumented immigrants, n63 peasants, n64 borderland women, n65 housewives and housemaids, n66 wage-earners in pink-collar ghettoes, n67 in garment industries, in the [*21] blue-collar trades, n68 on the streets as sex workers, cops n69 and gang members, n70 middle-class careerists, and professionals; we include heterosexuals n71 and lesbians, n72 the university student who has never known poverty n73 to one who has always known it. She may be a government worker, n74 a nun, n75 a judge, or a lawyer, n76 the owner of a small business and the highly paid consultant to a corporation. Latinas include assimilated and non-assimilated Mexicanas n77 or Puerto Riqueño n78 or Dominicans, n79 or Cubanás; n80 from those who don't know Spanish, to those who use it and other dialects or cultural habits to preserve their identity and their racial/ethnic pride. n81 While we are different, n82 however, many of us do share a common value [*22] system, one which can be the source of a proud identity as well as the source of our perceived and self-constructed limitations.

For example, the Latinas who know the influence of Catholicism and Christianity know that we are often raised with conflicting messages of who we are and what we should be. The bodies of our mestiza-india n83 sisters are treated like beasts of burden - we are the object of men's sexual needs, we are whores if we know too much about sex, our menstruation is a curse rather than a blessing and symbol of our creatrix role in life, while our men are taught to possess and abuse our bodies. Some of our female elders, and we ourselves were taught by religious dictate that our bodies are vessels that do not belong to us but rather to the natural laws of reproduction. Our stereotyped role is that of a submissive, naive, rather childlike "sainted mother" whose purity must be protected by her husband or her male relatives. n84 If in fact some of these generalizations apply to us regardless of our Latina identity and if some of us agree that such attitudes deeply affect our ability to empower ourselves in our homes, our communities and in the halls of government and justice, then seriously, we need to create the space for a consciousness-raising agenda aimed at understanding the interplay of such values, their benefits and burdens in our lives and those of the women of our communities.

To my intellectual compa-tild n-erases - we cannot achieve self-determination and/or self-direction in the public or private spheres of our lives without self-knowledge of who and where we are. As a small and dwindling number of Latina law professors, we can begin to empower ourselves by committing to a collective multi-year project aimed at validating the existence of Latinas everywhere. Minimally, we should start with placing ourselves in the history of women in the legal academy. This task is not about minimizing the important contributions to date of important critical race feminists; n85 [*23] it is about filling the void in existing feminist, Queer or race/crib scholarship of writings by or about Latinas. It was, sadly, no surprise when I recently scanned multiple sources of one of the largest Latina/o research libraries in the country n86 and could not find a single source in print which identified the accomplishments and identities of Latina law professors. My own library liaison was stunned by his search - one would think, he said, that there would be some directory identifying Hispanic or Latina/educators in general? But there was nothing. It is not so amazing then that one reason why we need a Latinas and the Law Conference is that we don't even know who we are, where we are and what we are doing with our intellectual gifts and talents.

The first goal of a long term literary project should give credit to some of the forerunner Latina law professors who have already contributed to the growing body of literature in the law that weaves in the Latina experience. n87 Latina legal scholarship needs to be our starting point because, by validating our own professional identities we help destroy the damaging stereotypes that burden Latinas in all sectors of U.S. life. Sadly, in the minds of the average American, whether female or male - we are most often typecast as housewives, single parents, welfare recipients, maids or cleaning ladies; we are workers in pink collar ghettoes and "illegal aliens." n88 We are hardly first thought of as trial lawyers or as the educators of students who will be among the elite lawyers or politicians of this nation. Undoubtedly, many of our Latina sisters do find themselves in such non-lawyer jobs enduring experiences like losing family members to raids by la migra, n89 sexual harassment by supervisors, and psychological abuse by employers who justly low wages for domestic service by threatening to report undocumented workers to the Immigration and Naturalization Service. n90 But unfortunately, this is too often the only image members of the Anglo/white dominant culture [*24] have of Latinas. Many professional Latinas know well the experience I have repeatedly had of being mistaken in their office suites for the secretary, rather than the boss. The invisibility of our identities engenders broader patterns of disjunct treatment which elude the law because of unconscious patterns of sexist racism. n91 These are the same attitudes that render us "unequal and unfit" in the eyes of our colleagues in the elite profession of the law. n92 We therefore owe it to ourselves at least, to confront the construction of the
identity Berta Hernandez-Truyol so aptly described as las olvidadas. n93

C. "Latina/Latino": The Pleasure and Danger of a New Identity Category

A few months ago, shortly before LatCrit II in San Antonio, I chatted with a white male colleague - who writes in one of my fields of interest and who was visiting UT Law School for the year - about my involvement in a new scholarship movement called Latina/o critical legal theory. My colleague literally scratched his head, widened his eyes and said with a big grin, "Latinos and a critical theory? That strikes me as somewhat absurd; where do you begin to draw the parameters for such an identity category?" I realized then the challenge we were about to face as a scholarship movement.

Of course, quickly on the defensive and yet fully understanding some of his confusion, I responded that the Latina/o category was quite defensible if it was thought of as an identity label produced by personal and social construction. I pointed out that significant portions of the American population were quite comfortable with the label Latina/o understanding that it did not deprive them of their national heritage as Puerto Rican, Cuban, Mexican, Salvadoran, and so on. I suggested that factors shaping the "Latina/o" experience varied, but at a minimum, race and ethnicity issues reflected a close association to CRT. Of course, I suggested that one reason for the emergence of LatCrit also stemmed from perceived differences from CRT, differences that called for theories of legal analysis that could appreciate the intersectionality of one's identity as Latina/o with factors that give rise to unique forms of racism against us - different not only from that against African-Americans, but even sometimes between different Latino ethnicities. I offered the example of the unique patterns of racism against Tejanos in the Southwest versus [*25] that against Puerto Ricans in the Northeast. While one group, whether citizen or not, knows what it means to be targeted because of skin color by INS Border Patrol agents, the other does not - because of Puerto Rico's colonial status - yet both groups experience language discrimination that arises from U.S. Anglo cultural dominance. Meanwhile, as racial minorities, the skin color discrimination against Latina/os may overlap in housing, employment and education no different from that against African-Americans. But again, even here, for Latina/os it is not always about skin color - it is frequently a Spanish surname that will trigger the disPte treatment. I urged him to consider at least the critical role of language and race as significant intersectional factors in Latina/o discrimination, a statement that puzzled him even more as he argued, "why should speaking a foreign language be the basis for an identity category?" n94

What I ultimately realized was that my colleague had not quite accepted the basic premise to my answer - that an essential element to the inquiry being called Latina/o critical legal theory is a relentless attention to a theory of multiple consciousness. And, that some acceptance of the notion that Latina/o critical legal studies could exist, as long as there is a collective stance or perspective taken by a group of scholars vis-a-vis the topic Latina/os. n95 Which there is - ergo LatCrit I, II and LatCrit III, being held at the University of Miami.

In this vein, the questions we have asked beyond "Who Are We?" are explored in greater detail below - how are we constructed as Latina/os, or non-Latina/os and why, or how do we experience both external and internal social, political and legal constructions of our identities? These were some of the questions that continued the conversation we initiated, tentatively, at LatCrit I.

[*26]

III. At The Scholar's Kitchen Table: Feeding Our Hungry Hearts For Intellectual Growth And Community

Twenty six pieces were produced for this LatCrit II Symposium issue - although many more people attended the conference, which was held in San Antonio, Texas with the support of St. Mary's Law School. Their themes have been clustered around the issues which have dominated the discourse of LatCrit from the beginning, such as the social construction of race and gender, and the significance of our subjective experiences and positions within the academy to LatCrit theory in the first and second clusters. The third cluster of essays advances a volatile conversation that was initiated on the themes of religion and spirituality on Day 3 of LatCrit II - a conversation which, in my opinion, is critically linked to a conversation we have not sufficiently explored yet - on class and unconscious elitism. I have titled this section "At the Scholars' Kitchen Table," in remembrance of the cozy atmosphere the local members of the Planning Committee managed to create for Day 1 of LatCrit II, which carried the theme of "Latinas and the Law: Who are We?" For a few hours, a wooden table, some Mexican paper mache flowers, Indian artifacts and family photos set upon a colorfully blanketed table transformed a large hotel conference room into a reminder for our female panelists of the important role la cocina (the kitchen) played in our homes, for it is the
The discussions at LatCrit I focusing on the relationship between CRT and LatCrit were initially fraught with feelings of tension and liberation for the Latina/o law professors. One point of liberation resulted from the public realization that CRT had evolved into a discourse which too narrowly focused on the African-American experience, an uncomfortable truth. The aim of LatCrit I was not transformative experiences gained from engaging in postmodernism, but also for the personally engaged in the interplay of modernism and their own engagement in broadened critical analyses of the mere fact of CRT's existence as a catalyst for scholarly production and engagement capable of addressing the commonalities and differences in the experiences of discrimination by Latina/os vis-a-vis those of African-Americans and other racial and ethnic identities. As a result, some Latina/os had begun to feel disenchanted with the possibilities for having that need met in the established CRT discourse. Of course, many scholars, including Latina/o scholars, benefited from the mere fact of CRT's existence as a catalyst for their own engagement in broadened critical analyses of race, gender and sexuality, not only for the engagement in the interplay of modernism and postmodernism, but also for the personally transformative experiences gained from engaging in critical theorizing. The aim of LatCrit I was not to bunk the organic process that had centralized the African-American experience of racism in legal discourse and decentered everyone else's. But, the truth revealed did open up the possibilities for a prolific and expansive critical discourse among Latina/o scholars about our potential roles for redefining the focus of our theories of discrimination, with an eye on the multiplicity of experience and identities capable of being described as "Latina/o." Because LatCrit scholars themselves would be diverse in their identities and interests (e.g., feminist, gay, lesbian, African, Asian, and Native American, etc.) and already committed to the values of the CRT insights, many have seen LatCrit as an outgrowth, overlap, and maybe even a reinvigoration of CRT. LatCrit owes its energy for the felt desire and privilege to engage in critical legal scholarship to those forerunners in that discourse known today as CRT, one of whom, Richard Delgado, is a Latino himself, while another, Derrick Bell, contributed essential writings to the Black/White Pdigm. Thus from a purely historical perspective, it is quite obvious that there is a close relationship between what emerged as CRT, and the explosion of a body of scholarship produced by a generation of new scholars whose own diverse ethnic, racial, sexual and gendered identities has forced upon CRT the need to expand.

The essays in Cluster One then, are further examples of the continuing expansions of a discourse aimed at discovering the "Latina/o critical legal experience," with its commonalities and differences from the established critical race discourse, and a focus on speaking to the broader political goals of recognizing the marginalized existence of multiple oppressed identities in American law and culture. It is more with optimistic hope for an enhanced Critical Race Theory than with aspersion that LatCrit theorists are interrogating, for example, the relationship to the Black/White Pdigm and CRT's limited critiques of inaccurate constructions of race that have affected regional racial politics and created obvious barriers to coalition building between U.S. Blacks, Latinos and Asians.

In this vein, Professor George Martinez, in his essay, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, examines how the relationship between Blacks and Latina/os is implicated by a construction of race which has classified Mexican-Americans as whites, in situations where such a classification significantly affects the distribution of public resources, like education. Citing to the example of Dallas, Texas, Professor Martinez identifies the impact of the construction of race that has been played out in Northwestern U.S. politics as a public resentment and barrier to coalition: that Blacks fight for civil rights; Mexican-Americans ride their coat tails and share in the benefits. Yet the historical evidence defies the notion that Mexican-Americans have ever truly benefited from manipulative constructions of their identity by the dominant WASP culture. If anything, it is abundantly clear, argues Martinez, that Mexican-Americans have been identified as the "other," as non-white, and that they share an equally enduring historic battle for racial equality and civil rights - fighting the impact of beliefs that have cast them as genetically inferior in the eyes of dominant Anglo whites. Martinez urges CRT scholars to reconsider the racialization of Latina/os so that they can get closer to the ugly truths of minority existence in America - that we are more alike than different when it comes to the historic examples of racist oppression that urge us to join forces in the struggle for social justice. But we cannot get there, says Martinez, if we don't create "epistemic coalitions," bases of knowledge about ourselves that will help us learn the truth about any other racialized group.

Of course, external constructions of race have their greatest impact when they are widely
communicated, and to the critical race scholar, that is what can make them so dangerous to the narrative of so-called "racial progress" in America. Robert Chang's essay Who's Afraid of Tiger Woods, n106 reminds us of the powerful modes of discourse that can be facilitated by the wealthy enterprises of sports and the media when they glorify the exceptional minority athletes as anti-race heroes and heroines (e.g., Jackie Robinson as role model non-victim, non-recipient of affirmative action). Chang asks us to consider further, however, what message we get about race when we celebrate the ambiguous racial identity and accomplishments of an individual like Tiger Woods whose hard work and talent are held up as the criterion for breaking the color barrier. Chang is most troubled by the politics of identity over Tiger Woods' very body by multiple communities who seek to claim him as either Black, Thai, Chinese, or the deracialized "American." So, Chang asks, is this just an extension of the construction of Asian Americans as model minorities and non-Black/Marielitos Cubans n107 as white? Or is the fascination with Tiger Woods the question lurking within his problematized ambiguous racial identity, a question equally critical to LatCrit discourse - how to confront the external/internal construction of race, and how to confront the possibility of being challenged with why Latina/os are concerned with race to begin with? That, Chang says, may be the most threatening aspect of LatCrit theory - the fact that it may ineluctably force the point that race is nothing but the product of social construction, because in fact Latina/os can be and are of any race. He concludes that the fear of that question is immense to a society that doesn't want to think about the implications of living in a multiracial world to begin with. n108

Kevin Johnson's essay Immigration and Latino Identity n109 Pflels Chang's concern over the impact of external constructions of racial identity as he urges Latina/o scholars to engage the complexity [∗30] of how our identity is constructed because of patterns of in-and-out migration, intergenerational status, national origin, class, education and so on. The law treats the immigrant and the Mexican-American citizen differently, and the constant flow of immigrants attests to the tremendous diversity of Latina/o identity and their interests. Yet, whether immigrant or not, we are all treated as having a racialized identity. Thus, if we ignore the way in which the immigration status issue is manipulated in public discourse, such as pitting Blacks against Mexican immigrants competing for jobs, we also don't realize that status competition between citizen and immigrant - which is supported by the law n110 - becomes the source of self-constructions of our identity that aid in Latina/os being constructed as "the enemy within." The pressure to assimilate and to see our own racialized brothers and sisters as the enemy is facilitated by the absence of a discourse that deconstructs the historical context of the status of Mexican-Americans in the United States. Johnson illustrates the impact of self-construction by assimilated Latina/os that see themselves as different from the immigrant in the context of the politics that surrounded California's Proposition 187 - as about 25% of Latino voters, more or less assimilated, supported the enactment of a law intended to bar undocumented persons from receiving any kind of public benefit.

Johnson urges us to examine this and other examples of intragroup hostility surrounding issues of voice, identity, language, education, class, resident status, alliance to the old country, and the assimilation that every immigrant experiences on some level. It is incumbent upon us as Latina/o scholars to take back the discourse of our identity, to deconstruct the relationship between racism and social rank caused by both internal and external views of who we are. The danger of not looking at one of the key factors in our communities' intragroup conflicts - immigration - Johnson argues, is that a different story will be told, one that doesn't serve our interests.

Ana Novoa's essay American Family Law: HiStory-WhoStory, n111 is an example of how using gender as a category of analysis in law and history together with a Latina/o critical perspective can enhance one's understanding of the master narrative n112 on a subject of legal [∗31] analysis that is classically identified with Latina/os - familia. Writing as a teacher of family law who works in a clinical program at St. Mary's Law School - a program designed to serve the homeless - Professor Novoa deconstructs the myth of the "family" as studied in family law courses as traditionally "nuclear." This perspective, she argues, perpetuates domestic systems designed to serve "the economic empire" of white men. In opposition to this myth, the historical evidence reveals that even the earliest forms of family in America were extended households, and that a multitude of cultural traditions in the U.S. continues to extend kinship family networks both horizontally and vertically. Yet, the accepted notion of the "American" family, when documented, is a family that looked first to male property rights, rather than intimacy, nurturing and sustenance as the social and legal ideal. Novoa argues throughout her essay that values like patriarchy, male individualism, gender-specific labor, consumerism, and the subordination of minority groups have contributed to a family law that is all askew - achieving this by using individualistic and atomized notions, instead of communal and humanitarian ideals
to deal with our most intimate and personal relationships.

Novoa's evidence urges the reconstruction of the notion in American family law and policy that we all are in - or want to be in - nuclear domestic arrangements. If anything, we are living in a society that has families of choice and need, whether they are so because of their cultural values - such as is the case with Latina/os - or because they are examples of oppressed groups who rarely benefit from any traditional notion of American "family law."

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Many of us have been emboldened to interrogate our own identities by the personal narratives of two insightful Latina scholars, Margaret Montoya and Leslie Espinosa. Each of these women has written risky, liberating and now classic essays which theorized about identity from the subject position. Risky in that mainstream legal academics criticize the personal voice as self-indulgent and non-scholarly, and liberating in that, as Angela Harris has described CRT scholarship in general, they are examples of the personal empowerment and transformation that comes from using one's voice to speak to truth. Of course, the use of personal narrative has long and solidly been situated in non-legal arenas. Historians for example, often use oral history when a thorough story of critical events or subjects is inaccessible from the vantage point of the kinds of documents (e.g., letters, diaries) that are or were available only to the literate, middling and upper classes.

Feminism inspired scholars of all disciplines to employ the personal narrative, whether one's own or that of others, to explore concepts like "women's agency" and gender consciousness to illustrate how women have lived, to how they have understood what it means to be oppressed, or to revolt and struggle against external structures of power (e.g., religion, law) which used their sex and gender to subordinate the masses. Thus, narrative, whether one's own or that of others, is highly relevant to the questions of identity that are becoming critical to Latina/o critical legal theory from a gendered perspective.

The internal or self-construction of Latina identity is examined in the essay Telling Stories, Telling Self: Using Narrative to Uncover Latinas' Voices and Agency in the Legal Profession by Maureen Ebben and Norma Guerra Gaier. In this tradition, Ebben and Gaier interviewed three Latinas working within the legal profession - an administrator, a judge and a lawyer - to explore issues of equity and identity that are triggered by the hyperbolic fears of the dominant culture when the media reports official projections that Latina/os are becoming the largest U.S. minority. Their stories gathered tidbits of recollection, self-history and experience, in the interviewees' professional capacities, as law students, and members of their families and communities. The analyses interlock race/ethnicity, gender, class, language, history and culture to produce a narrative that confirms the existence of unique patterns of racist sexism for Latinas in the legal profession and society-at-large. Stories of hating law school for the pedagogical styles of the Socratic method, and of self-torture in identity or conflict with family roles, illustrate the systemic exclusion of women of color from the legal profession. Yet each eventually found herself in the legal profession, despite the systemic discrimination, out of a desire to advance social change for both personal and communal empowerment. Of course, while each is a tale of discrimination equally familiar to Latina law professors, it is also a story of endurance and strength, a sense of agency from the self-history, and an example of how "voice" is a part of the quest for identity and liberation and an essential ingredient of LatCrit theory - especially from a gendered perspective.

Gender and age are at the heart of a brilliant analysis by Antonia Castañeda on the role that language has played as an instrument of oppression in the lives of Tejanos/Tejanas. Castañeda's essay, Language and Other Lethal Weapons: Cultural Politics and the Rites of Children as Translators of Culture brought tears to my eyes. Bold in its confrontation of the myths and lies which have crucially affected the construction of Latina/os in the Southwest as "the enemy within," asks us to consider the role that children have been forced to play in the interpretation of "cultural universes" for adults. These universes are comprised of everything from the nations' mythology and ideology (e.g., the Old West, individualism, the frontier) to the first hand experience of oppression as children translate for their immigrant parents who cannot speak English - finding few words in one language to capture the essence of a parent's plea in another, and even fewer to explain to their elders the social prejudices their identity engenders in the Anglo person or institution they dealt with. Caught between two worlds, Castañeda argues, children of immigrants have historically contended with the limits of systems of knowledge, both cultural and political, as they interpret, for example, at the store which has denied the family credit, at the clinic which is misdiagnosing a medical problem, at the school which has stereotyped and expelled a child as a lice-ridden discipline problem, and so on. The experience serves as one
possible lens from which to understand self-constructions of identity by Latina/os who either become assimilated "non-Latina/os" or who see translating as a source of empowerment and understanding of one's relationship to family, community, class and the world at large. Castañeda's analysis is derived from a series of interviews conducted among Tejanas who lived and worked as migrant farmworkers from 1945-1965, a period when Mexican immigrants and Tejanos were being recruited for agricultural labor under the Bracero program and would later be deported by Operation Wetback as "illegal aliens" in 1954 when they were no longer needed. The boldness of this essay is its subversion of the accepted literary tenet that translation studies are about the written text. It is an especially important addition to Latina/o critical legal theory to see the value of understanding the experience of child translators, from a contemporary as well as an historical basis, by hearing the stories of the women she interviewed and their memories of the times when they were the translators of culture.

Leslie Espinoza's written remarks on the Panel that produced this first cluster of essays on the construction of Latina/o identities reminds us that while we may identify as the "oppressed," we are also liberated in our quest to come together as a group voicing different examples of racist oppression. Her essay encourages critical self-awareness of the limits we confront in our task to found a community of scholars, one limit being that the tools we use come in the packaging of what Audre Lourde referred to as "The Master's tools." Those tools are the language we use to describe ourselves and each other, the role of hegemonic power of the master narrator of who we are, the role of our own cooperation in the construction of our identities, the incorporation of the racist language and ideas we use to divide ourselves in our communities. We are asked to be wary of the shifting and changing markers of our identity, the issues that can both join us and divide us, such as immigration; the issues that elude us in their description and their impact, like race - which for Latina/os, is about color and then not always about color. Ever mindful of the "critical" in LatCrit theory, Espinoza urges us also to remember, that as law professors - the theorists - we live comfortably in the Master's House, and that we must know our ability to see the world as a person who can see, hear and write like the master, even as we shift personas and wear different masks in our multiple roles as teachers, scholars, lawyers, activists and members of our families and communities. Ever optimistic about our liberyatory quest despite the ugliness we must confront when we deconstruct the sources of our oppression, Espinoza ends her essay with the three thoughts that identify her refreshing style as a narrator and writer: that we bring faith into our work to work against oppression, hope to maintain vision, and unabashed love and caring to motivate us in our work for liberation.

B. Cluster II - Composing LatCrit Theory: Self-Critical Reflections on "Latina/os"

It is by far one of the most radical agendas of LatCrit theory to contemplate the task of producing a critical legal discourse that hopes to balance the various tensions created by scholars who come to the subject of Latina/os by taking positions that do not necessarily imprison "ourselves within any given position." Frank Valdes spoke of this radical agenda in the foreword to the first symposium initiating a scholarship movement that could take the topics of Latina/o ethnicities, CRT, and post-identity politics in a postmodern legal culture from theory to practice. At the heart of confronting the relationship of LatCrit theory to CRT, he urged, was the need to become self-aware of our own experience with the sameness/difference debate: could Latina/os in the U.S. find enough similarities in their experiences based on language, culture, history or circumstance to generate a sense of pan-ethnicity? Would LatCrit theory be a hostile sister/brother to CRT or more like a close cousin to it? And, how would a move from the modernist identity politics which only focused on race, to a postmodernist concern with consciousness of multiple sites of oppression, identified by scholars who spoke from their own subject position based on race, ethnicity, gender or sexual orientation, become the basis of strength in community rather than weakness from the category lines we have used to divide our selves? The essays in Cluster Two advance the concept in LatCrit theory of a scholar's contributing to the mapping of Latina/os sameness and differences by writing from the perspective of their unique interpretation of the interlinked networks of oppression.

Guadalupe Luna's essay "Zoo Island": LatCrit Theory, "Don Pepe" and Señora Peralta reminded me of why I urged this woman I met in my first year of teaching at the University of Texas to join us in conversation about Lat/Crit theory and scholarship. As a MALDEF lawyer she had given a luncheon keynote talk to students in the Minority Orientation Program which has now been abolished by UT as a consequence of the Hopwood decision. I remember how she told students that she had become a civil rights lawyer because she had not forgotten the
discrimination she and members of her family suffered in Texas. She encouraged them to confront the task ahead of them, in learning the master's confusing language and paradigms, with courage and commitment to their communities. There is a fiery spirit in the essay not so different from the energy she conveyed then and at LatCrit II, as Luna embraces her Chicana identity as a teacher and scholar who seeks to empower legislators, judges and political actors who want to deconstruct the ideology of the conqueror.

Luna's thesis is that hegemonic law misrepresents the reality and social condition of subordinated groups, like Chicana/os in this country. Her task then, as a scholar and teacher of property and agricultural law, is to identify the areas of the law where history, hegemony and the politics of "race-baiting" in this country - centered on issues like affirmative action - play themselves out. Using two case studies to illustrate the untold stories about the relationship of Chicana/os as a subordinated group to Anglo-American property jurisprudence, Luna illustrates the hypocrisy of an American vision of law which promotes "universal ideals for all" while ignoring the specific and complex impact of racism on Chicana/os. The case studies thus reveal an ignored history of Chicana/o land ownership, colonization efforts, and collusion between the government and land speculators to systematically disenfranchise Chicana/os through "public takings." The cases reveal the hegemonic ideology of the law as judges interpreted the rights of "jumpers" and "settlers" claiming universal rights to "public" land grants against the claims of Mexican landowners - effectively stripping them of their rights, [*30] their land and in time, even of their history, with the help of derogatory racial stereotypes of them and their descendants.

I also felt proud to know the person behind the brilliant mind that produced the talk and essay LatCrit y La Des-colonizacion Nuestra: Taking Colon Out. n134 As an activist and scholar whom I met in the context of her work as an educator for the human rights organization American Friends Service Committee, Luz Guerra has consistently asked the hard questions of those who proclaim their commitment to the liberation of all peoples. In her gentle yet critical style, Guerra posed one of the most challenging questions to the attendees of LatCrit II - the issue of our having placed on the LatCrit agenda a discussion on the histories of the indigenous peoples of this hemisphere within a Latino context "without having critically examined the term "Latino' and its relationship to Native history." n135 That, she argues, is impossible, if the purpose of our critical race histories is to supposedly engender critical race practices that will help alleviate the suffering of indigenous peoples here and in this hemisphere. Are we for example, argues Guerra, to attribute an unquestioned label "Latina/o," in the context of LatCrit theory, to indigenous human rights activists like Mayan/Guatemalteca activist Rigoberta Menchu - who learned the master's language of Spanish in order to tour the world to decry the genocide of Mayans in Guatemala? What in fact does it mean to call ourselves Latina/os when we must confront a history that reveals the truth of the labels we choose for our identity politics - a five hundred year history of internalized oppressors' ideologies, which told us that these Western hemispheric lands were empty when in fact we were many, that made us American when we are not, that hyphenates us with the words chosen by the colonizer, like "Hispanic" and "Latino." If we truly seek empowerment and connection with all, then we must share the common ground of "des-colonizacion," taking Colon (Christopher Columbus) out of the thought systems of the colonizer we use to empower ourselves. In order to accomplish that we must define the conceptual grid that narrates our history, a distorted history that we have internalized and that sePtes us from others and from all of the parts of ourselves. This means asking, do we have a conceptual grip of Latino/ism, Latino studies, Chicano Studies, etc., that is subservient to the conceptualized grids of imperialism and post or neo-colonialism? When is it useful to use the term Latina/o and why not? What, for example, does it mean for me to "decenter whiteness" as the singular referent from which to study race re [*38] lations so as to center interracial relations n136 when my Mestiza identity is comprised of both white (Spaniard) and Native (indigenous) blood? And, more important, to what good use are we putting our discussions on LatCrit theory? Our task, Guerra argues, is to de-internalize the mythologies handed down to us by our oppressors, to reclaim our histories, to see in each other's faces the other outsiders with whom we share the global "outsider table" - we, she argues, who are the children of colonialism, full-blood, half-breeds, Mestizos and Mayas, speaking Quechua, Creole, English, Spanglish, n137 with straight and kinky hair, blond, brown, past our faces to the history and the mythogized past with names like Uncle Tom, Malinche, La Virgen de Guadalupe, "el macho" and "fulana de tal." n138 She argues that if what we seek to do is dismantle old systems, then some of our identity labels may have to go in the folder labeled "archetypes for future study." We must agree, says Guerra, to work in solidarity with each other, not to reproduce the structures of the old system, to de-colonize the structures we carry individually and collectively, sharing our common and different interests as the basis for a new order.
Enrique Carrasco's essay Who Are We? n139 ponders the relationship between our quest to discover who we are as Latina/os en comunidad and what we do, or can do in our work as employees, activists, teachers, scholars and lawyers. Not unlike the two previous essays, we are challenged, urged to consider the possibilities for examining who and what the Latina/o community is that we are in and [*39] are attempting to describe, preserve, defend? Carrasco problematizes the potential views - the global, top-down, statistically oriented, objective and detached viewpoint, one which may produce simplistic, non-critical information about identity; against the street, office, classroom, courthouse view, maybe that of the Latina activist whose identity is grounded in both activism and scholarship; this perspective requires multiple consciousness to be appreciated but it also offers a more clear view of our collective process when we gather as LatCrit scholars. Since we are not at the top and can't be, our grounded position, says Carrasco, actually offers a more spectacular view of the self-construction of our identities. We do this, Carrasco unabashedly hopes, to continue the struggle for human liberation, the "good fight" that isn't dependent on a modernist or postmodernist label, given that one reason to reject modernism is the freedom we get to define ourselves. n140 But, not without some commitment to constant self-critique of why we want a LatCrit theory to begin with, argues Carrasco, of the standards we come up with to sustain us in the politics of difference and to enhance "workable and just conceptions of the good life for our communities."

If we understand Latina/os' own construction of their identity as based on multiracial, multilingual, multiphysical and multisexual and gendered experiences - phenomena which have been the focus of sharp critiques of established Pdigmns of discrimination theory and analysis n142 - then how does one begin to tackle and connect these complex identity questions to the broader goals of achieving coalitional alliances for social justice and political action with any and every minority group who in these revolutionary times is feeling attacked by the right and abandoned by the left? Professor Hernandez-Truyol addresses these hard questions in her essay Building Bridges III - Personal Narratives, Incoherent Paradigms and Plural Citizens, n143 as she passionately urges LatCrit scholars to join her in wrestling with the theme of building coalitions and maintaining alliances as an essential practice towards empowerment in the face of a divisive public discourse that aims to disempower the members of racial minorities in this country by appealing to stereo [*40] typed notions of our inherent cultural inferiority. n144 Hernandez-Truyol explicitly promotes an intellectual framework of analysis which is "grounded in all of our worlds not only part of them."

The intent of the framework is to pierce the concept of identity into its potential multiple-facetedness based on racial, gender, sexual, ethnic, religious, class, educational, residential and linguistic differences. For after all, as she personally narrates herein and in other essays, n146 to be Latina is to be a multiple worlds-traveler through the fluid borders of our lives and our experiences, where identity traits like our ability to speak Spanish, or not, become the gates to our insider/outsider experiences. n147 Knowing what it means to be at once insider and outsider is the measure of our fluid multidimensional identities. The "complicated mappings of our differences" says Hernandez-Truyol, are invisible in the "master narrative discourse," with its emphasis on race relations analysis premised only on the Black/White experience, a point increasingly stressed by LatCrit scholars. n148 For Hernandez-Truyol, however, the greatest problem is not necessarily the acceptable yet "incoherent Pdigmns" used to define race, ethnicity and national origin. It is our own n149 self-construction of who we are. So she asks the hard question - have we in fact seen ourselves not as who we think we are, but rather as who the dominant Pdigm makes us out to be? n150 Professor Hernandez-Truyol optimistically urges us to engage in the re/construction and re/vision of a text that sees the multiplicity of differences not as limitations, but rather as sources for a critical theorizing about race/ethnicity/color/language at a minimum, which respects the differences and identifies the "fascinating points of convergence" in and among our LatCrit communities. In that analysis we will find common bases of discrimination produced by the master narrative, n151 based on experiences of language oppression, n152 racism, [*41] xenophobia, and racist sexism. It is in identifying the shared concerns and similarities that we find the richness of difference as the foundation upon which to re/formulate who we are and reject/resist the construction imposed on us by a master narrative. In that struggle for a truly inclusive discourse, Professor Hernandez-Truyol sees a path to empowerment and coalitional politics.

Pat K. Chew's essay, Constructing OurSelves/Our Families: Comments on LatCrit Theory n153 is both about identity and the coalitional possibilities engendered by the LatCrit movement. Professor Chew offers the multicultural identity perspective of a Chinese-American who grew up on the South side of El Paso, Texas, surrounded by Mexican immigrants and Tejanos. She asks, if LatCrit discourse is about oppression, identity and discrimination, then as teachers or scholars, for example, how do we actually...
see ourselves? What does it mean to be an activist, an agent of social change, or a victim of discrimination? Chew argues that it is essential to the notion of self-constructed identities that we know we have roles, that we interpret those social roles, and that we are always exercising the choice to play or not to play those roles. She offers for example, the problem of the label "Asian-American" from the perspective of her mother who rejected such a label because she never forgot the protesting of the Japanese invasion of China, or who never saw herself as a "victim" because denying the label, she believed, protected her from the reality of discrimination. Our identities and our roles may carry the meaning we give them, but they also can be the basis for external claims to our identity. Thus in her role as law professor, Chew knows that claims to her ethnic minority identity surround the institutional requests for speeches, committee work, etc. In those moments, she knows and accepts the way her identity is seen and interpreted. But when she shops for groceries and is suddenly taken by another customer as someone who can't speak English, it surprises her to see that others make claims on our racial and ethnic identities when we least see their relevance and that we interpret those social roles, and that we are always exercising the choice to play or not to play those roles. Chew brings to life the multiculturally identified vantage point with stories of her upbringing in El Paso, in a family that to this day uses English, Spanish and Chinese all at once to communicate, and that celebrates holidays with both Chinese and Mexican foods. Remembering however, that in her youth she didn't really know Mexicans other than customers and workers in her family's store, Professor Chew admits, as do other LatCrit scholars, n154 that exploring our self-constructed identities both liberates us and evokes ambivalent emotions of wonder, joy and pain, as we see how dominant cultural values have shaped our identities, externally and internally and forced us to see other ethnicities as strangers rather than as allies.

The final essay in this Cluster by Professor Gerald Lopez, Learning About Latinos, n155 urges LatCrit scholars to pay close attention to how Latinos and Latinas are being characterized in public discourse given our undeniable growing presence in the American social, economic and political scene. Because we have usually been cast, at best, as "afterthoughts" and "throw-ins" or at worst as "wannabes" and "impostors," Professor Lopez argues that our support for those who push and develop information on the Latino condition must carry with it careful scrutiny of the assumptions, sources, connections, motivations, and methods used to produce information intended to make Latinos matter. The harsh truth is that we are more visible but we are still misunderstood. The diversity of who we are and what we do or what we think, portrayed in fancy studies like the Latino National Political Survey (LNPS), which only focused on Mexicans, Puerto Ricans and Cubans, irritates those of us who recognize the bias inherent in the doing or the reading of political surveys. Certainly we should point to the media's facile misuse of the LNPS data which was used to cast Latinos as anti-immigrant, pro-assimilationist, anti-affirmative action, anti-bilingual education individuals lacking a strong political community and identity. But it's not enough to point the finger of distortion at the LNPS producers or the media coverage, Lopez argues. For we, as LatCrit scholars and among those who also produce knowledge about Latina/os must be wary of becoming trapped by the very stereotypes we aim to question. Lopez advances some chilling self-critical questions for our own research agendas as we march forward in the struggle to make Latino/as matter - that we recognize we too may have exaggerated facts, concealed what we didn't know, ignored a truth we found uncomfortable, or denied some fact that disturbed the image we wanted to portray about Latinas/os.

Our search for "counter-caricatures" Lopez argues, needs our commitment to building on the dimensions of life the LNPS rightly captured, as well as to the messiness of coalitional work. Our careful scrutiny of existing and new research should rest on cohesive theory and articulated motives as we advance knowledge on some of those factors that make Latinos/as matter - political community, citizenship, self-identification, race, assimilation, history and language. Lopez would thank the producers of the LNPS for their ambitious goal in claiming space for the term "Latinos" in American discourse. But he also wants us to join in the efforts to build upon its data, to connect the good and the bad of it to preexisting research and especially to understand that we should curiously ask more, adding the LNPS to the toolbox of social change for Latino/a empowerment. We need more because LNPS didn't get it all and neither did its readers. We also need more because the question Who Are We? is much more complicated and its nuances escaped the LNPS, at least from the angle of Latina/o political life. We deserve more because when we put the studies down or turn off the news we know that Latinos/as may no longer be seen as inferior beings but they're also still not seen as complete citizens. Lopez acknowledges that our activism for better and more subtle understandings of what the Latino/a is, forces us to confront the balance between the need for detailed studies and for more accessible information. This means learning how to master those moments when knowledge, scholarship and the media intersect, a task that may be daunting yet exciting, one
undoubtedly worth taking on because on the American scene Latinas/os are here to stay.

C. Cluster III - Religion and Spirituality in Outsider Theory: Towards a LatCrit Conversation

Gloria Anzaldúa has written a chilling account in a poem titled Holy Relics n156 of the repeated exhumation of the body of Teresa de Avila, a legendary saint from Spain, whose piety and devotion to God have been the source of teachings about moral behavior passed down through generations of devout Catholic families. In my own Mexican Catholic family, for example, one sister wore a gown modeled on the habit of Abbess St. Teresa de Avila for her First Holy Communion - instead of the traditional white lace dress - to enhance the symbolic homage to a young girl's role model of sacrifice, honesty and obedience. In Mexico, or among very traditional Mexican-Americans, the saintly dress-ritual is part of a parent's promesa n157 to publicize a holy intervention in a time of crisis. Historic tales of saints whose dead bodies were cut to pieces to create relics for protection or miracles, or rituals devised to implore a saintly presence in one's body n158 were a significant part of the lore of my cultural upbringing. As a Mexicana/Chicana/ Latina, I can say that critical aspects of my personal identity were shaped as much by religious attitudes and education as were my gender, class and educational opportunities. I have grown up both loving and hating the role of Catholicism in my life. As an out marimacha, n159 I have struggled, literally, in combative talks with my mother, with the Vatican's official position thatsepítes the sin from the sinner by condemning at once homosexuality and discrimination against lesbians and gays. But, anything I have ever done or believed in connected to social justice - from union activism, to antihar protest, to civil rights lawyering or now to critical race and feminist theory, originated in my earliest training in some of the basic principles of Christianity I acquired in Catholic school or in my home. I have always found it ironic that in my family the most open-minded and accepting members of my lesbian identity, those who have welcomed me and my partner as a couple into their homes, are also very traditional, heterosexual Catholics whose deep faith encourages them to be loving, accepting and non-discriminatory. My feminism, in contrast, is based on a sincere rejection of the Mexican gender roles for women, which are inseparable from Catholic sexist views of the ideal woman as a submissive, pious, domestic and subservient wife to her husband.

Of course, my own conflicted relationship with Catholicism doesn't allow me to generalize about the role of Catholicism for all Chicanos and Mexicanos, and even less so for other Latino groups such as Cubans and Puerto Ricans. Even in Mexico, other Christian faiths now exist next to the historically omnipresent Roman Catholic Church, n160 while among the Caribbean Latina/os, Catholicism has co-existed with Santería n161 - evidence of the diversity in the religious and spiritual experiences that are ascribed to Latina/o culture. For one significant segment of the Latina/o community however, Mexicana/os, religion is undeniably important, and as a source of significant cultural values it is essential to LatCrit theory. n162 Yet, while there may be commonalities among certain segments of the Latina/o population when we speak of the influence of religion in our lives, especially Catholicism, one cannot speak of a homogeneous Latina/o religious experience. That doesn't mean it cannot be examined for the impact it has had, and continues to have, among certain Latina/o ethnic groups for whom Christianity has equally been historical oppression and subjugation, legends, myths and superstition, community, faith, and spirituality, gender role identity and conflict, or succor, support and refuge, and so on. Like any aspect of culture, religion will be a convoluted, subjective, sensitive and even political topic in the examination of Latina/o identity. Its examination can evoke intersectional views based on race, ethnicity, class, gender, education, etc. To outsiders, some of the rituals of religion and spirituality may appear as the legacies of class oppression, while to insiders they may be sources of pride in one's Latina/o identity and a symbol of resistance to the cultural obliteration that is risked with assimilationism. n163

The essays in Cluster Three open up a discussion that will need to be carried forward in future LatCrit conferences. Verna Sanchez, in Looking Upward and Inward: Religion and Critical Theory n164 sets the tone well in asking - why has there been a virtual absence of any focused, critical examination of the role of religion in the "treacherous terrain of American racial politics[?]

n165 What is its importance? We know and indeed accept that religion shapes our identities and our lives but, Sanchez notes, it has not been fully examined for its historical relationship to the issues of interest to critical race theory - such as racism, sexism and homophobia. In effect, not to explore the non-neutrality of the law's impact on those people whose place in American history marks the cultural genocide of Africans, indigenous peoples, women, bisexuals and transgenders, is to leave out an important topic in any critical legal theory. It must be a nuanced critical analysis, Sanchez notes, for religions "have often been used to both help and hurt people of color." n166 It is an important call for a needed
discussion on the hard questions about who we are and where we come from if we seek a thorough deconstruction of the sources of our liberation, oppression and identity, whether we find them in liberation theology in Latina/o America, or apartheid's [46] support by South African churches, or the free religious exercise rights of Santeros, or the Vatican's position on women's reproductive rights and homosexuality.

In fact, LatCrit II provided the opportunity to explore the role of religion in defining the cultural traits one might collapse under "Latinismo" n167 although it wasn't exactly a planned discussion. Between Verna Sanchez' call for the discussion in her essay, and the recalled events of an explosive session on the third day of LatCrit II - provided by Professors Nancy Ota, Emily Hartigan and Rey Valencia in their essays - I suspect religion will be on the agenda of future LatCrit conferences. A searing and unexpected opening discussion subsumed the scheduled talk on the construction of race, gender and class, and birthed a conflict of perspectives on the role religion should play in evolving notions of a critical theory centered on Latina/os, the law and culture. The conflict was generated by reactions to a comment on space and critical theory by Professor Nancy Ota, and multifaceted reactions and views on the special role that Catholicism plays in the culture of Southwest Tejanos. It was exacerbated by a largely misunderstood and undercommunicated role that the meaning of "Catholicism" has played in the development of the conference's host institution, St. Mary's Law School, which has broadly interpreted the meaning of "the Catholic mission" to advance progressive legal education, and as a result, had suffered virulent attacks from right wing opponents of such programs in 1997.

The strong feelings generated on the third day of LatCrit II are distant now. Their memory can barely evoke the passion that left some attendees wondering whether the LatCrit community could in fact discuss the politics of religion at a law school in a Catholic university and still remain in community. For me, with distance, I have concluded two things about the critical talk of that day: (1) that I'm grateful for the unexpected discourse generated by the honestly expressed discomfort with the religious icons that filled the room where the morning's panel met at St. Mary's Center for Legal and Social Justice (The Center); and (2) that I hope the LatCrit community will more carefully examine the potential sources for misunderstanding the role of Catholicism and politicized religious icons like La Virgen de Guadalupe n168 in the shaping of - and pride in - one's identity as a Chicana/o or Tejana/o, whether in Texas or other parts of the Southwestern U.S.

[47] It was ironic to learn later from a St. Mary's faculty member that Brother Cletus' artistic icons had pushed some emotional buttons given that his art is an expression of the faith and the political, an extension of his service in the AIDS community, as an AIDS victim himself, among those who suffer discrimination because they may be poor, gay and Latino. The progressive St. Mary's faculty had appropriated Brother Cletus' art imagery, focused on the feminine values of love and nurturing, as symbolic of the Center's commitment to social justice in a community which punishes the poor, sick and Latina/o people of color. Of course, only in retrospect some conferees understood the strong political connections between various "religious" personnel in the San Antonio community, the St. Mary's faculty, and its Center, which houses five legal clinics to teach students the practice of law for social justice. The opposition, however, to an alleged uncritical alliance with symbols of Catholicism, n169 symbols that only feed internalized homophobia for some Latina/o sexual minorities, did open up an important discussion about religious practices and beliefs as sources of cultural identity.

With the excited discourse of that morning as a backdrop, Reynaldo Valencia's essay On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II, n170 emerges as a critical examination of the role of Catholicism in the shaping of working-class Tejano identity. Reacting partially to the challenge put by Professor Nancy Ota in her essay that a critical conference had "uncritically [invoked] religion through blessings and prayer and images," n171 Valencia at once agrees that the experience of religious culture among Latina/os is not homogeneous and that Catholicism may not even be much of an identity issue for other Hispanic subgroups. However, Valencia argues that for a vast majority of working-class Mexican Americans living in the Southwestern part of the U.S., Catholicism is an intensely significant force in the shaping of identity and community, "largely because it has been accepted, rejected or otherwise confronted and dealt with by these individuals." n172 This is a moving essay which explores many facets of the working-class experience of Mexicans in Texas. Noting the extreme rarity of success among Latino men like himself who barely make it out of high school or young adulthood because of segregated education and violence, Valencia offers an important insight into the life experience of a people for whom religious culture has produced essential aspects of what it means to define oneself as a working-class Mexican-American, whose identity is
tied to notions of family and com [*48] munity that are insePble from cultural/religious notions of identity, role and responsibility. Weaving throughout his essay various stories that illustrate the importance of religion in the development of Mexican-American men who both fail and succeed in this racist society, we come to appreciate Valencia's analogy to the feminist slogan that the personal of religion is essential to the secular political for the working-class Latinos of Southwestern Texas. This is an essay that excises out of the term "culture" one of the most important aspects of grasping the various attitudes, beliefs, practices, behaviors and values that are acquired, passed on and preserved in an ethnic group and one's identity - that of religious culture and moral ideology. n173 This essay encourages us to see that religious culture among Latina/os or any other racial or ethnic group bids myriad avenues of interpretation and perception.

Of course, we cannot tease out the elements of the role religion has played in the politics of identity among certain Latina/os, such as Chicana/os of the Southwest, without a relentless attention to the various factors that intersect with religion, that for some individuals make it a source of deep pain, like Latina/o lesbians and gays, and for others, a source of comfort and cultural pride. n174 Professor Ota uses her essay Falling From Grace: A Meditation on LatCrit II n175 to embellish on the importance of intersecting any discussion of "religion" as "culture" for Latina/os with factors like gender, race, class, and sexual orientation. Ota thus urges us to consider that [*49] critical scholars who intend to reconstruct jurisprudence must come to terms with historical domination and subordination so as not to duplicate hierarchical power relationships. Here is the rub of this agenda - knowing that our agenda of deconstruction must come to terms with the internal and external structures of oppression, that to be critical for legal theory may cause feelings of discomfort and guilt. But Ota asks, if we don't do this how can we challenge structures of subordination? In this vein, Ota uses the historical perspective on Catholicism, Latina/o religious heterogeneity and the diversity of religious tradition among Asian-Americans to find differences and similarities in religion as a source of identity, community and potential "wedging" between communities. Ota's essay offers a lens into the sources of oppression and/or tolerance for homosexuality among different racial and ethnic groups that rest on unique interpretations of the heterosexist mandate. While some may have explicit prohibitions against the practice (e.g., Christianity), others' religious traditions are neutral (e.g., Buddhism), yet both Asian-American and Latino communities largely manifest a cultural sexual repression and commitment to heterosexism that encourages homophobia, denial, silence, gender-phobia and lesbian invisibility.

In the final essay in this Cluster, Disturbing the Peace, n176 Professor Emily Hartigan reconstructs the events that produced the volatile discussion centering on religion and sexuality on the third day of LatCrit II with an eye towards deconstructing the complexity of the intersections that surfaced between spirituality and politics as people reacted to Professor Nancy Ota's challenge - had the conference organizers demonstrated an uncritical alliance by having the day's panels scheduled in a room filled with Catholic symbols? Writing from the stance of a St. Mary's faculty member who was defensively pained by the multiple levels of misunderstanding, of false and clear consciousness resonating in speakers' remarks, Hartigan explores her view of the question that underwrote the morning's emotional conversation - "What is the relation between an excess of signifiers, to use the LatCrit vocabulary, and a Catholic university"? n177 Hartigan notes the themes that kept surfacing in people's comments - memories of religion, Latino cultural values, struggles for sexual identity, acceptance and nonacceptance by family members, the meaningfulness of the icon of La Virgen de Guadalupe in the Southwest among Mexicanos and in labor struggles, contrasted against the absence of that meaningfulness of the Madonna among Cubans or Puerto Ricans, the Pdoxes of loving and hating the Christian values passed down through family and [*50] culture, and the curious mix of spirit and law being woven in and out of a discussion that for some ripped open our hearts and minds to our personal intersections based on gender, sexuality, class and race. In the discussion Hartigan sees the gift of consciousness, the place where we grow through our emotional discomfort. She also fills in the gap of information that might have tempered the remark of uncritical alliance with "offensive" religious imagery, explaining the subtleties surrounding the rise to power of a charismatic female dean who invited progressive, social justice law professors, some Catholic and others not, to provide the intellectual foundation for supporting a very radical meaning of "the Catholic mission." In the end Hartigan's essay exposes the Pdoxical role of the Catholic Church in identity politics and social justice activism. For even if we understand how St. Mary's clinics bring justice for those fleeing the power of the INS, or death threats in Central America, or simply a battering spouse, we are still left with the stories of individual pain rooted in the powerful influence of the Church. And even as we understand that people like Hartigan, who once left the Church and then returned to it, would rather criticize it than focus on its authority, we also cannot deny the
historical and continuing influence of the Catholic Church and some of its leaders in shaping people's lives, sometimes for the good and sometimes not. Hartigan invites us to explore those Pdoxes with her hope and concern for the multiple hurts of that morning, painful truths which, together with this essay, tell us that an inquiry into the "reality of Catholicism" is an inherently biased question premised on one's personal experience of joy or suffering with the undeniably powerful role that religion plays in shaping our personal identities.

In closing this discussion I will offer one more awareness this discussion triggered for me about the relationship between religion, race and class which is about sensitivity to the multiple internalized forms of oppression we are capable of. In a different article I wrote that progressive scholars can become the unwitting perpetrators of the very forms of discrimination they so loudly cry against. n178 I wondered whether the facile judgment of St. Mary's Law School's use of Catholicism to undergird radical and progressive work at the legal clinics, didn't rest on a kind of unconscious elitism - an inability to see the needs of the poor out of a subconscious fear and disdain of the poor. I couldn't help but think that the conferees' inability to hear what the St. Mary's faculty was saying about the role of the social justice clinics in the San Antonio community was the product of a subtle class issue that awaits some deeper thought and analysis. n179 In the context of the clinics, to address the needs of the poor, at least in San Antonio, means accepting the clients who walk through the doors for all they are, people who differ from us in terms of class, ability, education, and the kind of sophistication that it takes to think about things like the historical oppression by the Church. To embrace fully the meaning of the Center, is to understand that the most important people coming through its doors are not lofty scholars, judges and legal thinkers, but instead are among the poorest of the San Antonio community - refugees of violence, poverty, racism, sexism and homophobia. For people like them, Churches and their ministers are very often the only bridges to freedom and safety from political terrorism, hunger, illness and war, and yes, the same people who are associated with institutionalized doctrines that are subject to wide-ranging interpretation relevant to critical social and legal discourse, e.g., reproductive rights, sexism, homophobia, etc. n180 Whether we call it "religion," or "spirituality" or "the moral" or "the ethical," we enter a terrain that is fraught with multiple interpretations because of the diversity of our internally and externally constructed identities.

Although, in retrospect, some conferees may have wondered how it was the conversation steered so far from the planned agenda of talking about the race/class differences and commonalities between Latina/os and Asian-Americans, there is a bit of the determinist in me who believes the religion discussion needed to happen. It broadened the scope of analysis for examining race and class within the context of a specific cultural identity. I believe the religious discussion, however it was triggered, and even the pain that was shared by at least one gay Latino colleague, was a gift to our evolving efforts to create a diverse community of scholars forging ideas for healing and empowerment. The fact that there will be unexpected issues for discussion, an "organic" and uncontrollable process so to speak, is about the only predictable factor about the LatCrit conferences so far. In that volatility, as many will probably recall, there was openness, excitement, honesty, healing and critique, room for analysis, and personal growth. There were many experiences that some individuals will see as the hope for preserving Latina/o critical legal theory as a scholarship movement and community. The conflicted discourse at LatCrit II could be seen for critical race scholars as "the blessing in disguise."

This brings me to a final commentary on where we are going as a community. It seems that so far we have not figured out entirely how to accommodate at least two distinct paths LatCrit can take. It begins with the obvious reality that we are a collective of both tenured and untenured, clinical, activists and non-activist professors and scholars. Arguably, the conflict centered on religion and its practical/physical manifestations at the Center for Legal and Social Justice can be seen as a catalyst for further inquiry about the need for a more cohesive philosophy that explains whether or not we intend to accommodate all paths, and that critically examines what that means. For example, are we to be a gathering of only legal scholars? That was not the case at LatCrit I. Are we to be consciously interdisciplinary at every panel? Are we to integrate on every panel scholars and activists? How are we going to define activism? Is it sensible to segment scholarship and activism? I, for one, have been defining both my teaching and my scholarship as intellectual activism because the contemporary issues of the day, which are using race-baiting tactics to destabilize the few gains of the civil rights and feminist movements urge me to do so. n181 What then is the purpose of our scholarship? Whom will it serve? How broad do we want our audiences to be? Are we to be generators of just more scholarship that is unconnected to our surrounding communities? Is our purpose just to make inroads in the overall discipline of the law as writers and not to produce writings and teachings for those in the streets, in pro bono practice, in clinics or in legal aid? I imagine that some of us see the
possibilities for both kinds of philosophies to [*53] be embraced by LatCrit as a whole, but that future conferences will produce more exacting organizational theory and practice for accommodating the interplay of the "reconstructive" n182 part of our intellectual agendas. In this spirit of reconstruction the final section of this Foreword offers one LatCrit scholar's perspective on the possibilities for expanding the reach of critical theory into the classroom as an example of the material side of intellectual activism.

IV. Foreward March In Revolutionary Times

On the day after the Fifth Circuit held in Hopwood v. State of Texas n183 that the plaintiff's constitutional rights under the Fourteenth Amendment equal protection clause had been violated by the law school's use of a dual-tracked affirmative action program to admit law students, I found myself awkwardly discussing the implications of the decision in a civil rights course. One of the difficulties I experienced standing before the class talking about the role that affirmative action programs had played in fulfilling the promise of equality in Brown, n184 centered on the court's reasoning that everything from "blood type" to alumni status to musical and/or athletic talents were more relevant to serving as legitimate admissions criteria than one's race or gender. n185 The reasoning of the opinion angered me not only for the distorted interpretation of the role that race and gender consciousness had played in alleviating this nation's blatant, historic patterns of discriminatory intent and impact. n186 I was disturbed by the unarticulated political message to anyone who had ever supported or benefited from an affirmative action program. n187 But the greatest difficulty I had that day, was confronting my limitations in emotional detachment from a look of pain and deep sadness I saw on the faces of several minority students who sat in [*54] my class that day. For days after the ruling, tension permeated the halls of the U.T. Law School, as students gathered in small racially identifiable groups expressing their feelings about the decision, some with joy and others with hurt and seething anger.

As a law professor, I have often found myself in the privileged role of counseling students who become my research assistants or who seek me out when they discover I was a civil rights lawyer. I say it is a privilege because I believe that sharing on a one-to-one basis broadens not only the education of the person being mentored, but also that of the mentor. In the weeks following Hopwood, I remember having more students than usual stopping by for support and direction. Some felt targeted by the politics of the decision, others felt Anglo white students' fear and hostility towards them, and others just sought hope in a future career and profession they felt betrayed by.

One of the greatest gifts to my professional development has been the energy derived from my recent involvement in two professional activities - one as a member of the Society of American Law Teachers (SALT), the organization responsible for the recent march by law professors in San Francisco opposing the re-segregation of our public universities, n188 and the other my involvement in Latina/o Critical Legal Theory. These professional engagements have encouraged me not to give up hope in the face of a politics that has managed to manipulate this nation's history of race relations and concepts like "colorblindness" in an effort to preserve white male privilege and supremacy. Thus, I have redirected my anger into the energy and activism it takes to forge community with like-minded-colleagues across the nation who are as upset as I am with Hopwood and/or Proposition 209 in California. n189 My professional activism has also encouraged me to begin theorizing about the importance of a reenvisioned legal pedagogy - one which addresses the relationship between law, power and knowledge and that sees the law as both an instrument of oppression and a tool for social justice.

A few judges and scholars have noted that contemporary law professors need to recognize that a gap between "the world out there" and the classroom has been widened in recent decades. Students are graduating from law school without a real sense of what they are supposed to do with their acquired education. n190 Law professors, including critical legal theorists of all persuasions, have not sufficiently theorized about pedagogical intent at any of our institutions. The legal academy has in fact forged an arbitrary division between "clinical" and "traditional" education, a section that I think is grounded on elitist principles. Thus, the "worst" schools only provide practical experience and don't ground a student in enough theory. The "best" or "better" schools only do, or mostly do theory and thus produce students who supposedly know more about how to "truly think about the law." The supposed "best" schools have abandoned the responsibility for assuring that a student knows anything about the practice of the law in its multifaceted potentialities, from nuts and bolts practice to ethical considerations. Instead, professors casually remark that students needn't worry, they'll "pick it up with experience." Yet, the bureaucratization of law practice in the form of large professional corporations and the intimate relationship between the greatest investment scandals of the century and irresponsible lawyering n191 should have sent the signal to law schools some time ago. We cannot shirk the responsibility to produce a pedagogy that tightens the
relationship between theory and ethical practice, and that, at a minimum, serves the interests of those who enter our schools with specific social justice goals in mind. Very few schools seem committed to a teaching agenda that demands that a student be grounded in concepts of both theory and ethical practice. n193 Fewer examples of legal education exist that have seriously confronted the problem of the gap between theory and practice by at least beginning to reenvision the possibilities for "clinicalizing" the traditional classroom. n194

LatCrit scholars and teachers, who are social justice minded law professors, have an opportunity to use the contemporary struggles over the politics of affirmative action, diversity and racism to begin to reimagine the boundaries between their scholarship and their teaching, and how they engage with their students who come to them [*56] for professional guidance and inspiration. As both traditional and clinical professors, LatCrit scholars have much to offer in response to the growing institutional pressure to create a linkage between the pedagogy of the clinic and that of the classroom. n195 It is not coincidental that with the rise of the politics of retrenchment on every policy or program that has made it possible for there to be a critical mass of Latina/os in the legal academy, that I have felt a greater need to more than dabble with nontraditional teaching techniques designed to break down the boundaries between theory and practice. Students are coming to law school asking for more and better training on how to become social justice lawyers because they are witnessing a changing world becoming hostile to the dreams of people like Martin Luther King. The day I witnessed the dying of hope in the souls of a few students who interpreted Hopwood not from the vantage point of "colorblindness," n196 but from that of personal experiences of discrimination, I understood that my role as a teacher was getting harder and that I needed to think of ways of addressing that sense of my professional responsibility.

A. Theorizing about The Politics of Pedagogy: Transgressing the Boundaries Between The Clinic and the Classroom

In the fall of 1997, as I opened up a new semester in teaching a civil rights litigation course I again felt the need to do something in my teaching that would harness the feelings generated by my students confronting the political and social realities for public education in Texas generated by the Hopwood case. I felt it ironic that I was starting out a course which would focus on the historic school desegregation cases, including Brown, while right outside my office students both inside and outside of the law building were organizing [*57] a 5,000 person march for diversity on the UT campus. The march had been triggered by widespread negative reaction to the controversial words of a colleague, Lino Graglia, who was accused of using cultural racist theories to support Hopwood and his opposition to affirmative action. n197 In my own classroom, I understood quickly from the class discussions on the day of the march that I had more than a handful of students who were hungry for training in the skills that would help them become lawyers dedicated to using the law as an instrument of social justice. In the midst of this heated political environment, I realized that I had a golden opportunity to use the energy of the pro-diversity movement to advance a pedagogical experiment aimed at tightening the relationship between theory and practice in a setting, the non-clinical and traditional classroom, which usually prevents closer contact between professor and graduate student. I was also motivated by my worry that a new daunting textbook would overwhelm my students in a late afternoon class and that I might experience after the exciting discussion in the days of the campus activism, the classroom experience of "catatonia." n198

I urge LatCrit scholars to begin to re-think how they have been teaching their courses as an extension of how and why they engage in non-mainstream scholarship. If in fact, our scholarship is about forging community and advancing progressive insights into the role of law in society, then we owe it to our students to demonstrate those possibilities for them while they are still in law school. We may not reach every student but we will at least reach more than we usually do if we consider the possibilities for a restructured pedagogy. A restructured pedagogy should engage our activist thinking about critical legal theory on issues like identity politics and discrimination into new and simple teaching methods capable of transferring the excitement we feel in our work to our students. As scholars, we all know the positive experience generated for us when we write to advance legal theory that addresses issues of oppression. As teachers, I believe we can generate for ourselves and for our students similar experiences with the use of experiential learning models that take teachers and students to a place somewhere in between the clinic and catatonia.

The project I describe below is an example of the pedagogical experiment I introduced in my civil rights course in the Fall of 1997. [*58] I wanted my students to come away from a term fraught publicly with tension, hope, anxiety, frustration and anger, feeling that both their emotional intelligence and their intellectual abilities had been stretched despite the
pressures created by the campus politics. My hope was to create a learning task that would help them deconstruct the legal, social, historical and economic realities underlying the political debate about race and affirmative action in public education. The "Austin Schools Project" taught more than a dozen of my students, without the benefits of the typical clinic, that there is value in learning when theory and practice come together. They learned that their own future theorizing must be informed by careful attention to good practice. But, practice took on a different meaning as they also learned how to gather evidence, how to negotiate relationships with hostile yet valuable sources of information, how to organize an investigation so that they focused on the most important issues, how to anticipate funding problems for litigation, and so on. The meaning of "civil rights and public interest litigation" changed with every step towards the preparation of their investigative/advocacy reports. The tasks had a spillover effect in the classroom. Thereafter, class discussions were more lively, intelligent and sophisticated. The students also generated valuable original data that could serve as resources for the Austin public education community.

B. A LatCrit Scholar's Transformative Teaching Experiment: The Austin Schools Project.

The Austin Schools Project had two material and goals - for the students to receive alternative credit for their course work in a three-credit civil rights litigation course and for them to do so by working as members of a team producing an investigative report that would answer the question, "Is Austin in Compliance with Brown?" Students in my class were intensely aware that the principles and social policy issues in cases we were reading in this course, especially those on the famous school desegregation cases starting in the 1930s and through the 1970s, bore significant relevance to the surrounding political events on the campus at the University of Texas. A march of 5,000 students opposing the publicized controversial views of a member of the law faculty and in favor of diversity in education had re-opened an exciting discourse among students and faculty, a discourse which was at times emotionally tense, confrontational, challenging, educational, and frustrating. On the day of my second class for example, we had a major student sit-in in the lobby of the law school which followed the march against the re-segregation of the University of Texas system. In that environment it was difficult to ignore the need for as open and honest a discussion as could be had on the relevance of principles like "equality and the 14th Amendment," to the surrounding political environment. At stake, was the potential for a more thoroughly analyzed discussion on the meaning of equality and its relationship to an unexamined theory of "merit." Most public rhetoric narrowly focused on standardized testing, "colorblindness," the presumed inferiority of racial and ethnic minorities, or the falsified image of Asians as model minorities, and so on. I designed the Austin Schools Project to help students connect the activism on campus to an examination of the history of segregation in Texas, in its public schools, and to the contemporary political discourse, as well as to legislative and judicial developments in the 5th Circuit, and the nation.

1. The Method: Team Projects

Experiential models of teaching are premised on the theory that all human beings have different learning styles and that a comprehensive theory of education attempts to incorporate elements of pedagogical technique which honors that reality. While some students, usually a small minority in the typical law classroom do quite well with the confrontational and elusive Socratic method, many students, usually in the majority, need much more to engage their minds in thinking about and applying the legal principles we gain from reading or hearing them discussed. In my own experience, every time I use problems and partner or group discussion in class, we have more extended and diverse exploration of issues in a case, and the energy flows along multiple planes of analysis incorporating storytelling, debate, criticism and lecture. I agree with Professor Randall, that the burden is heaviest on the professor in the typical classroom which only relies on the Socratic method, and that the aliveness of a classroom from open discussion generated when students work together on a problem, or when they role play, is beyond comparison for its value.

Having had the benefits of experience in school desegregation litigation in my early years as a civil rights lawyer, I advised my students that if they chose the alternative assignment they had to work with at least one partner. They were to be in role-play as a fictional law firm or public interest advocacy group for six weeks as they conducted their investigative work and wrote their report. Each fictional law firm represented the same fictional client, a Mexican-American/Anglo family who had just moved to the City of Austin and was looking at the quality of the public schools before buying a home. The fictional family had learned that the quaint racially mixed neighborhood they had an interest in did not have the best schools. I guided their research assignment with an explicit set of criteria for how to produce a pre-trial
investigative report that would help them decide (a) whether there was any evidence to support the belief that the Austin Independent School District (AISD) was illegally segregated and potentially ripe for a mandamus action to re-open any existing desegregation decree, and/or (b) whether, even if there were insufficient evidence to support the filing of any legal claim, there was evidence to support the need for further investigation into the quality of education provided by the AISD to racial minority students based on the suspicion that the school system was still racially segregated. My guidelines for their research encouraged the production of detailed facts they could think of generating only if they carefully read and re-read the facts of some of the leading school desegregation cases, n203 as well as any local efforts which had been made in Austin either to de-segregate, integrate and/or declare as "unitary" n204 the public school system. The investigative report was to have a historical context component; a social, political and economic analysis; a statistical data and budget analysis; a section on relevant legal analysis; and a recommendation for remedies. The latter recommendations would be based on their data and what they learned in class about the difference between a discriminatory treatment versus impact models when trying to prove a violation of the Equal Protection Clause. n205 They could recommend action in the form of a draft motion for summary judgment or mandamus to re-open or they could produce an advocacy report directed at public officials in the education field in Texas urging them to re-examine their current management and control of educational resources based on their findings. Because the announcement for signing up for the project had followed three weeks of discussion of school desegregation and Title VI litigation as well as the events surrounding post-Hopwood activism on campus, I felt the project would be sufficiently enticing and the credit incentive attractive enough to generate student interest. I was right. Out of seventeen students who were in my class, fourteen signed up and eleven eventually produced four reports.

2. The Instructor's Hopes for Accomplishing the Task and the Learning Experience

I knew when I designed the Austin Schools Project that I was taking a risk. My hope was that students would gain some experience in defining the concept of "remedies" in both traditional and non-traditional ways. I also hoped that by emphasizing the importance of developing the historical context in public interest litigation that they would run into enough interesting data that would get them curious about the contemporary realities in public education in one of Texas' supposedly most "progressive" cities. Students were therefore encouraged to look at old newspapers, writings on Austin's experience as a Southern city with busing and integration, to any litigation that had developed in the city, to actually going to the school districts and looking at their records of meetings, and most importantly to learning to read through the volumes of statistics that document the flow of state and federal monies to create, staff and support every imaginable aspect of education and school programs. Because they had a limited time span of six weeks, and I knew my students would discover too much information and too little time to analyze it all, I served as a managing consultant who encouraged them to narrow the focus of their inquiry and analysis. I encouraged [*62] them to be selective in the data that could credibly take a public stance on the question, "Is Austin in Compliance with Brown?" at least from the vantage point of its audience being public policymakers in non-litigation fora.

No one in the class, including myself, had any sense if Austin AISD was in fact considered "integrated" by law and whether or not there was enough evidence to support a prima facie claim of discriminatory impact on any aspect of the quality of public education. We all had a hunch, based on the location of the University of Texas, that Austin is at least residentially segregated and that a number of the schools around certain parts of town would qualify as racially identifiable, that is, as having a population at least 15% above their demographic representation in the city's population. n206 But, because AISD also publicizes the existence of magnet school programs, and many students, both racial minority and not, had experienced these in Texas and elsewhere as failures in bringing about just racial integration, the teams focused on examining more closely how these programs helped the AISD fulfill its legal duty to comply with the first desegregation orders which had been entered in the seventies. All four student teams quickly determined that they were in no position for legal action. They faced a formidable discriminatory intent standard n207 in the Fifth Circuit, which had followed a [*63] declaration of the AISD's status as a "unitary system" in 1983. That standard required heavy proof that the defendant's actions were intentionally designed not to meet educational necessity but instead to further purposeful discrimination. n208 However, because students knew that the pre-litigation investigative report is often a tool for educational and lobbying purposes, they were encouraged to gather evidence of discriminatory impact at least to support the charges made in an advocacy report they might present to the School Board. They understood the difficulty of gathering evidence of intent to discriminate, but they were also
encouraged to narrow the inquiry on the illegality of specific programs in the face of the intent standard which presumes the legitimacy of the AISD's policies as a product of educational necessity. By being encouraged to narrow their inquiry to the actual functioning of a program in light of its presumed educational necessity, all teams eventually concluded that some of the policies and practices of the AISD were racially discriminatory in their impact. Others could be proved as being not educationally necessary and therefore potentially presumptive evidence of an intent to engage in purposeful discrimination. 

3. The Findings: The Aliveness of Racism in Public Education

All four teams produced similar conclusions about the quality of education in the AISD public schools. The list below is only partial:

[*64]
i) that a majority of the Austin public schools at all levels are racially identifiable schools which give the AISD the overall character of a dual system based on race, with the schools on the Northwest and west side of town regarded as the "white and Asian schools" and the schools on the east side of Austin being the Black and Hispanic schools; n210

ii) that a brief experimentation with busing in the 1970s, integrated just a few schools; as soon as the system was declared "unitary" in 1983, the new policies on attendance zones, openings and closings, construction of new schools, and so on, have followed and continue to follow historical patterns of intentional residential segregation policy set in the 1920s by the Austin City Planning Office; n211

iii) that there has been substantial movement of African-Americans throughout the city but that the school attendance zones continue to be drawn and re-drawn to facilitate past and existing patterns of residential segregation; meanwhile the permanence of attitudes by local government officials perpetuate historic patterns of intentional race segregation reflected in projections by the City Planning Office of Austin's racial demographics in the 21st century; n212

iv) that the building of new schools has been only coincidentally accomplished just when a school has become racially integrated so that, for example, a new high school was built in South Austin purportedly to alleviate the growth in two other high schools, but the way the attendance zones were re-drawn the new high school became all white and the older schools suddenly became predominantly Hispanic and Black; n213

v) that the schools with the magnet programs are created to benefit primarily white students in the AISD; n214

vi) that the creation of a middle school program with a magnet school to facilitate greater integration by attracting transfers by white students to predominately minority schools in actuality sustains two schools within [*65] one school building - a white student program (the magnet programs) and the minority program; n215

vii) that the racially identifiable minority schools are spending qualitatively less money per pupil than non-minority schools; n216

viii) that one of the clearest indicators of separation by race producing inequality in education per se is in the fact that the higher paid teachers are the teachers with more experience and are assigned most frequently to the whiter elementary schools; n217

ix) that there is a discriminatory assignment of teachers such that most minority teachers will end up at minority schools, depriving white students of the opportunity to ever see a Black or Hispanic teacher role model; n218

x) that although neighborhood attendance zones could easily be drawn to facilitate integration the transfer policies and optional attendance zones created in recent years actually facilitate racial segregation; n219 and

xi) that overall there is a significant disparity in test scores between minority and white students in the school district but that this disparity is clearly dependent on the demographics of the school. Whether white or Black or Hispanic, the student in a school that has become a minority school as a result of school attendance zones created by the AISD will not do as well as a student, white or Black or Hispanic, at a school which is racially identified as a white school. Therefore, the disparity in the tests is indicative of the disparity between the schools and that disparity bears some relation to the District's consistent policy of placing the least experienced and worst paid teachers at minority schools. n220

* * *

I know that the energy it took for me to produce last fall's pedagogical experiment grew out of the energy that I have gained from my engagement in Latina/o critical legal theory. The production of a report that is
also useful to the public. n221 empowered the [*66] students in their developing skills as researchers, analysts and advocates. Their work in turn will empower with valuable data those who know that untold stories of injustice and prejudice underlie the divisive rhetoric n222 opposing affirmative action in America. They also understood that a simple concept like "remedies" is more than the tail end of a lawsuit; it is a concept fraught with social, economic, historical, political and legal meaning.

For the LatCrit scholar and teacher, activities like the one I supervised with my students do take some extra time to design and implement. However, the contemporary social and political reality demand that we develop more creative teaching methods aimed at confronting the external structures of power that have dominated the legal academy and that threaten, indeed promise if unchallenged, the resegregation of all public education. When my students saw that AISD's schools produced "inferior" students as judged by their scores on standardized tests, not because of the inherent inferiority of their race or ethnicity, but because of consistent unequal distribution of resources to racially identifiable schools, they learned that public policy does not escape the impact of unconscious racism. n223 But, they were given hope in the struggle by doing their small part to deconstruct the impact of racist ideologies towards the goal of true racial healing for this nation.

C. Conclusion: Resistance, Community and Hope in Activist Scholarship and Teaching

As a LatCrit scholar, I am encouraged to go beyond the platitudes of "equality" set forth in a jurisprudence that wants to deny the reality of our racial, sexual, ethnic, gendered diversity as citizens of this nation. I am encouraged to take risks and to do so with the hope that in resistance I empower myself as I empower others to join in the march forward for social justice and liberty for all. When my LatCrit colleagues and I recently marched in San Francisco [*67] we were demanding attention to a growing problem generated by the impact of legislative and judicial decisions that will deprive worthy students of the education they deserve. We have been coming together in conferences to know each other, share our ideas and produce the writings and sense of community that can carry us through these revolutionary times of retrenchment and backlash against our civil rights. We could come together in our diverse identities because we understood that our forms of discrimination may differ from each other, but in coalition with others to fight racism we march for ourselves. I urge LatCrit scholars to continue producing the theories that feed our practice, whether as lawyers, scholars or teachers. I urge us also to engage in more of the practices, new, old and yet to be tried, in our clinics and classrooms, which will sustain our theories, keeping us strong in hope, resistance and community.

FOOTNOTE-1:

n1. See Part II, B infra for discussion on events at LatCrit II and the Latinas talking circle.


n3. The potential resegregation of public universities is decried as a consequence of legislative and judicial activities opposing affirmative action such as Proposition 209, a referendum in the State of California, which abolished the use of affirmative action in public services, education and benefits; and Hopwood v. State of Texas, 78 F.3d 932 (5th Cir. 1996) cert. denied, 518 U.S. 1033 (1996) which held as unconstitutional a dual-tracked admissions policy used by the law school based on its commitment to affirmative action. California's Proposition 209 was upheld against a constitutional challenge in Coalition for Economic Equity v. Wilson, 122 F.3d. 718 (9th Cir. 1997).

n4. Communities Affirming Real Equality (CARE) was organized by the Society of American Law Teachers (SALT). Sumi Cho and Margaret Montoya, key members of the LatCrit movement, served as co-chairs of the Task Force responsible for the strategic planning and implementation of the march as part of a multi-year Action Campaign targeting the retrenchment in the legislatures, courts, universities/colleges and in society-at-large, on the use of gender and race conscious criteria. See CARE March Flyer (1998) (on file with author).

n5. The choice of the terms "Hispanic" versus "Latino" can be the source of debate
and controversy given their institutionalized character by reporting agencies like the Census Bureau. The term Hispanic is criticized because it deprives the population it purportedly represents of its heterogeneity and it attributes a racelike character in socio-scientific and colloquial language that facilitates racial stereotyping. See Gloria Sandrino-Glasser, Los Confundidos: Latino/as Race and Ethnicity, 19 Chicano-Latino L. Rev. 69 (1998). The term "Latino" or "Latina" has been criticized as an inadequate substitute for Hispanic due to its colonialist origins. See Luz Guerra, LatCrit y La Descolonizacion Nuestra: Taking Colon Out, 19 Chicano-Latino L. Rev. 351 (1998) (discussed infra at Part III B). Meanwhile, LatCrit II was held in Central Texas, in the city of San Antonio, where Latina/os have harnessed political clout around the term "Hispanic" to represent the extensive Mexican-American population in this Southwestern U.S. region. Local organizers of LatCrit II advised non-Texas members of the planning committee to contextualize its use by speakers and other local dignitaries to diffuse misunderstanding from seeing the term used in conference literature.

n6. The term "Chicano" emerged from the politics of identity by Mexican-Americans in the 1970s. It is often associated with the historic labor struggles to unionize Mexican immigrant farmworkers in the Southwestern U.S. See Foreigners in Their Own Land: Historical Roots of the Mexican-Americans 262-63 (David J. Weber ed., 1973).

n7. Not unlike the term Chicano, "Tejano" is a term for the Texan of Mexican descent with a politicized consciousness of his/her subordinated status in American law and culture.

n8. The term "Newyoricans" colloquially refers to U.S. citizens and their descendants from the colonized island of Puerto Rico who migrate to New York City (NYC). The historic racial tensions between NYC Puerto Ricans and Anglo whites are the theme of the popular Broadway play and film West Side Story.

n9. A memorable moment was when Margaret Montoya began her talk and explained her nervousness before the audience with a story of the cultural magic many of us learned in our Catholic education which taught us to invoke the spiritual power by uttering or writing down the names of the Holy Family ("J.M.J." = Jesus/Mary/Joseph) and/or the Holy Spirit. The practice is noted in her essay, Margaret Montoya, Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis, 2 Harv. Latino L. Rev. 349 (1997). See also Part III C, infra, for a discussion on the role of religious ritual in the lives of Mexican Latina/os.

n10. See Guerra, supra note 5.


n13. At the beginning of the 1997-98 fall term at the University of Texas, a group calling itself Law Students for Diversity held a rally calling on the administration to assure diversity in the law student population in the face of declining enrollment of Black and Hispanic students resulting from the decision in Hopwood, 78 F.3d 932, which abolished the use of affirmative action in admissions to the University. On September 10, 1997, a conservative student group calling itself Law Students for Equal Opportunity held a counter-rally in support of Hopwood and asked Professor Lino Graglia, a longtime opponent of affirmative action, to serve as the group's spokesperson. At the press conference, Lino Graglia opposed any preferential admissions criteria and defended the use of meritocratic criteria like high LSAT scores. In his comments Graglia stated that the lower test scores of
Blacks and Hispanics were explained by their membership in cultures which didn't demand of their children hard work in academics and that didn't look down upon their failures in academic ventures. In the next two days a flurry of local media activity carried Graglia's controversial views across the state and nation. A week later the University of Texas witnessed a 5,000 student march calling for Professor Graglia's resignation and demanding from the Administration a commitment to the concept of diversity in student enrollment. See Mary-Ann Roser, Jackson urges UT to Fight Racism; About 5,000 Attend Rally Against Remarks, Austin American-Statesman, Sept. 16, 1997 at A1. See Part IV infra for a discussion of The Austin Schools Project, a pedagogically based research study which produced data that undermines the assumptions of individuals like Lino Graglia and others who rely on scientific race ideologies to proclaim the inferiority of Blacks and Latina/os. The data disturbs any notion of a fair, objective and "meritorocratic" system of admissions in Texas and summarizes evidence produced by teams of law students who found glaring examples of unequal educational resources in the public schools of the City of Austin. The findings strongly undercut the view that cultural traits, and not racist educational policies account for the inadequate performance by racial minorities. For examples of the new scientific racism see Richard Herrnstein & Charles Murray, The Bell Curve: Intelligence and Class Structure in American Life (1994).


n17. I remember well being told when I started out as a scholar in the early eighties that authors of good law review articles only wrote evenhanded analyses with the purpose of changing the direction of courts' decisionmaking. As "neutral" instrumental writings, articles were not supposed to be infused with evidence of the author's personal feelings and values. In time, I quickly understood the near impossibility of writing this way on subjects I had very strong feelings about like, racism, sexism and homophobia and obviously I came to appreciate the critical movement's passionate deconstruction of the established paradigms in legal scholarship. The last dozen years have thus produced forms of writing which freely incorporate the personal narrative, whether that of the author's or of outside subjects as writings that reach beyond the courts to broader audiences engaging in the production of cultural knowledge aimed at ensuring an open society through the free exchange of ideas. I chose to take that bold risk and discuss the consequences in an essay. See Arriola, supra note 12.

n18. In Spanish, one's grandfather is affectionately referred to as abuelito. Although Delgado certainly deserves this reference for his prolific scholarly inspirations, some of us owe our presence in the legal academy to the unceasing efforts of another abuelito, Professor Michael Olivas. See Michael A. Olivas, Before Legal Education and Professional Opportunities The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 Chicano-Latino L. Rev. 117 (1994). In fact, LatCrit emerged from the annual gathering of Latino Law Professors who joined Michael for dinner at the meeting of the Hispanic National Bar Association, and for a discussion on the progress of increasing the representation of Latinas and Latinos in the legal academy.


n21. See Delgado, supra note 19, at 561.

n22. See Delgado, supra note 14.

n23. See Olivas, supra, note 18, at 131.

n24. See Kimberle Crenshaw, A Black Feminist Critique of Antidiscrimination Law and Politics, in The Politics of Law: A Progressive Critique 195 (David Kairys ed., 1990) (arguing that conventional antidiscrimination legal theory casts the women as white and the blacks as men and therefore fails to capture the intersectional social identity and special problems of the "black woman").

n25. See Valdes, supra note 15; Arriola, Faeries, supra note 12.

n26. See, e.g., Mary Eaton, Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Sexual Identity, in Legal Inversions: Lesbians, Gay Men, and the Politics of Law 46 (Didi Herman & Carl Stychin eds., 1995); Ruthann Robson, Lesbian
n27. See supra note 17.

n28. See, e.g., supra note 2, and sources cited therein.

n29. At the forefront of the attack on the use of storytelling have been two scholars. See Daniel Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan. L. Rev. 807 (1993).

n30. CRT has of course served as the catalyst for various regional groupings of law professors of color (e.g., the Northeast Corridor, annual Mid-Atlantic Law Professors of Color, Western Law Professors of Color Conference, etc.) which have been very successful in producing smaller communities of scholars who support and inspire each other's works. See, e.g., Proceedings of the Third Annual Mid-Atlantic People of Color Legal Scholarship Conference Feb. 13-15, 1997 Part I, 35 J. Fam. L. 1 (1997).

n31. Thus, for example, I was invited to put together reading materials for the 8th annual CRT workshop for a panel focusing on the intersections between race and sexual orientation. This planned discussion was the fourth effort to have a discussion on the marginalized experiences of gay and lesbian people of color. Other efforts had been described - by gay and lesbian people of color who had been attending CRT workshops - as dismal failures because of the resistance by CRT folk to confront their internalized homophobia as a factor in the failed discussions.

n32. See Chang, supra note 14.

n33. Spanish for "community and family."

n34. See Guerra, supra note 5 (discussed infra Part III B).

n35. Spanish for "a tumultuous or turbulent movement."


n37. See Catherine A. MacKinnon, Consciousness Raising, in Feminist Jurisprudence: Taking Women Seriously 52-57 (Mary Becker et al. eds., 1994). Feminist political organizing by women in the seventies used the technique of consciousness raising which involved women sharing stories about seemingly intimate aspects of their lives that illustrated the depth of male oppression in their homes, communities and society at large. The discussion in Part III C, which centers on our cultural differences based on religion, resonates to the message of the feminist movement - that an examination of one's personal life experiences may produce politicized consciousness about the value or the damage of social and cultural attitudes which have influenced one's life experiences (e.g., growing up Catholic, hearing the constant damnation of homosexuals, and having these experiences influence one's emerging political consciousness about the difficulties of being accepted as gay or lesbian and one's decision to devote energies towards social justice causes against homophobia, and other examples of institutionalized oppression).

n38. As Stephanie Wildman noted at LatCrit I, the creation of this community urges us to consider how desperately we need more inclusive protocols for conferences, and that we literally "need to rearrange the furniture." See Stephanie M. Wildman, Reflections on Whiteness and Latina/o Critical Legal Theory, 2 Harv. Latino L. Rev. 307 (1997).

n39. Gunn Allen, supra note 36.

n40. See, e.g., Foreigners in Their Own Land, supra note 6, at 262-263.


n42. See Guerra, supra note 5 (discussed infra at Part III B.).
(providing an incisive description of the ideological terrain of the contemporary anti-affirmative action rhetoric). See also Elvia R. Arriola, Law and the Healing Warrior: The "Isms" in Our Bodies, Our Selves, Our Communities (Aug. 1998) (unpublished manuscript, on file with author) (arguing that to thrive in their work, social justice activists and/or scholars must heal the wounds of rejection based on core features of their personal identities).


n45. Both LatCrit I and II had volatile incidents that illustrated this problem. At LatCrit I, for example, the emotional safety of a conference about "Latinos" brought about a certain amount of "like-mindedness" for both men and women. Yet by the second day a vocal group of Latinas expressed their anger and feelings of sePtion induced by the masculinized environment they perceived in the tone and setup of the conference. At LatCrit II, an angry Professor Leslie Espinoza stood up with her hands akimbo in the middle of a conference room where everyone sat in a circle. She confronted an already standing Professor Beto Juarez to make a point about the unconscious sexism in his "lecturing" style of sharing, amidst a very heated discussion centering on religion, sexuality, progressive legal education and community. Obviously, such moments of personal dissonance with what it means to be "victimized" engage the greatest moments of communal risk, when a hurt and angry conferee confronts another on his/her "sexist" or "racist" (or other) behavior and maybe raises a conscience, but also may engender feelings of defensiveness and hurt that endanger that person's wanting to stay in community. I see these incidents as both liberating and dangerous in that without appropriate tools for processing how and why our emotional boundaries were loosened we risk being misunderstood as merely having lashed out in personal attack against our supposed friends and allies in community. I speculate we do this because it is less risky to call an ally at a crit conference a racist or sexist than to express similar feelings in our home institutions.


n47. Members of the LatCrit II Planning Committee invited conferees to help create a sense of community in our first meeting room by bringing any object, photo or item that helped them celebrate their identity and cultural roots.

n48. These are popularized notions of the scientific studies of conscious awareness and its relationship to the human brain which established that our brain governs the central nervous system in a crossed over fashion; the left/major hemisphere regulates functions like speech and language which are associated with thinking and reasoning; meanwhile the right/minor hemisphere, the non-speaking half, processes experiences through feelings. For a summary of the studies, see Betty Edwards, Drawing on the Right Side of the Brain 26 (1979).

n49. Id.

n51. We Are All Part of One Another, A Barbara Deming Reader (Jane Meyerding ed. 1984) [hereafter Deming Reader] (assembling a collection of essays and talks by a white feminist civil rights activist and advocate of coalition politics, whose work was described by black lesbian feminist activist and writer Barbara Smith as a demonstration of how "activism and the act of writing undeniably connect and can result, not in rhetoric or impenetrable theory, but in the clear and accessible telling of a life," and that the statement "we are all part of one another" challenges us to consider "that our oppressions and chances for freedom are inextricably connected."). Id. at xi-xii.

n52. Id. at 85.

n53. The term "praxis" as been defined in Critical Race Scholarship as practice grounded in critical theory. See generally Laura Padilla, LatCrit Praxis to Heal Fractured Communities, 2 Harv. Latino L. Rev. 375 (1997); see also Yamamoto, supra note 50.

n54. Deming Reader, supra note 51 at 167.


n56. See supra notes 36-37 and accompanying text.

n57. See, e.g., Trina Grillo, AntiEssentialism and Intersectionality: Tools to Dismantle the Master's House, 10 Berkeley Women's L.J. 16 (1995).


n59. Feminist studies of Sor Juana are emerging. See Feminist Perspectives on Sor Juana Ines de la Cruz (Stephanie Merrim ed., 1991). Apparently only one Mexican-American woman has presented an English translation of one of Sor Juana's letters to her father confessor re-affirming and defending her right to study. See Alicia Galvan, Autodefensa Espiritual (forthcoming 1998).

n60. An English compilation of some of the works of Sor Juana Inez de la Cruz is available in A Sor Juana Anthology (Alan S. Trueblood trans., 1988).


n62. See, e.g., The Sexuality of Latinas (Norma Alarcon et al. eds., 1993).


n64. See The Sexuality of Latinas, supra note 62.

n65. Women who work along the U.S.-Mexico border are known to experience work on the Mexico side in U.S. owned factories and on the U.S. side in domestic service. See Norma Iglesias Prieto, Beautiful Flowers of the Maquiladora: Life Histories of Women Workers in Tijuana (Michael Stone & Gabrielle Winkler trans., 1997).


n67. See, e.g., Denise Chavez, The Last of the Menu Girls (1986) for a down-to-earth narrative of working-class Latinas in the Southwest; see also Sandra Cisneros, The House on Mango Street (1984) (a Latina's working-class childhood in Chicago);


n70. Id.

n71. See Daughters of the Fifth Sun: A Collection of Latina Fiction and Poetry (Bryce Milligan et al. eds., 1995) (noting the intent of the collection to differ from the lesbian orientation of predecessor collections by Latina writers like Gloria Anzaldua and Cherrie Moraga).


n75. See, e.g., Ada Maria Isasi-Diaz & Yolanda Tarango, Hispanic Women, Prophetic Voice in the Church (1988).


n77. See Ofelia Dumas Lachtman, A Shell for Angela (1995) (a fictional exploration of the emotional and spiritual consequences of a woman who rejects her Mexican heritage and family); Demetria Martinez, Mother Tongue (1994) (exploring the role of a relationship between an assimilated Mexican-American and a political refugee of El Salvador in the development of the woman's personal identity).

n78. See Esmeralda Santiago, Cuando Era Puertorique<tilde n>a (1994) (translated in English the title means, "When I was Puerto Rican") (personal history of pre-migration childhood years of a young Puerto Rican woman).


n81. Berta Hernandez-Truyol provides personal narratives of reactions by Anglo colleagues to her intentional switching from acceptable "normative" English to accented English to heighten people's awareness of the dominant culture's unconscious desire to discriminate by seeking to repress the sounds of dissonance. See, e.g., Hernandez-Truyol, supra note 15.

n82. Our identity as "women of color" provides a powerful vantage point from which to examine the law's role in perpetuating structures of violence within institutional settings like the American workplace, when certain labor laws are interpreted to deny the importance of "minority identity" or agency over presumably more important liberal democratic notions like "collective rights." An incisive analysis of the role that the perspective of women of color can play in critiquing those interpretations of American labor laws which result in more "structural violence" and/or institutional subordination, than true equity or internal democracy, is in Elizabeth M. Iglesias' Structures of Subordination, supra, note 14.

n83. Mestiza or meztizaje refers to the crossbreeding between European Spanish Conquistadores and Native indigenous women whose relationship gave birth to a
new racial breed of Mexicans and other Latino-Americans. For a radical deconstruction and reconstruction of the concept "mestiza" see Gloria Anzaldua, Borderlands/La Frontera: The New Mestiza 76-101 (1987).


n86. The Center for Mexican-American Studies at the University of Texas.


n90. See Ruiz, A Promise Fulfilled, supra, note 66.


n92. See Arriola, supra note 11.


n94. Of course, one frustrating point of his comment was that he of all people, as a scholar on gay rights issues, should understand that writing from the subject position has been critical to the evolution of a viable "gay/lesbian/Queer" civil rights scholarship and jurisprudence, a topic that at one time judges and scholars viewed as virtually impossible to analyze from the standpoint of discrimination, because, at stake was a question of conduct, rather than status. This problem was the focus of early "gay rights scholarship." See, e.g., Elvia R. Arriola, Sexual Identity and the Constitution: Homosexual Persons as a Discrete and Insular Minority, 14 Women's Rts. L. Rep. 263 (1988).

n95. The project is ambitious. It focuses not only on the placement of Latina/os in American law, policy and society, but it also attempts on a practical level to integrate in a communal discourse a very diverse group of scholars and identities with diverse perspectives, both theoretical and experiential on the topic of Latina/os. See discussion at Part II B supra; see also Francisco Valdes, Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment, 2 Harv. Latino L. Rev. 1 (1997).

n96. More than one attendee at LatCrit I who was not Latina/o expressed both the need for Latina/os to develop a "Latina/o centered" discourse, and at the same time expressed a kind of defensiveness as Latina/o scholars openly critiqued the direction CRT discourse had taken.

n97. These are at least two of the benefits and opportunities Angela P. Harris
identified as perspectives on the status of Critical Race Theory in her essay, Foreword: The Jurisprudence of Reconstruction, 82 Cal. L. Rev. 741, 744 (1994). A third benefit and/or opportunity Harris identified from the engagement in critical race theory is the rise of a politics of difference capable of producing a reconstructed jurisprudence, one aimed at the alleviation of human suffering. Id. at 744.

n98. This was especially the felt mood of the attendees of the national Critical Race Theory Conference held on November 12-14, 1997 at Yale Law School. A majority of those who planned this conference were involved in or very supportive of the LatCrit movement and its spillover energy that helped produce a highly successful conference that was open to everyone regardless of identity or interest. This was a significant contrast to the early years of CRT when the workshops had been small and attendees came by invitation only. See Francisco Valdes, Under Construction: LatCrit Consciousness, Community and Theory, 85 Cal. L. Rev. 1087 (1998).

n99. See, e.g., Derrick Bell, And We Are Not Saved (1987); Derrick Bell, Faces at the Bottom of the Well (1996); Derrick Bell, Race, Racism and American Law (3d ed. 1992).


n102. See Part IV infra for evidence of the manipulation of the Black/White Pdigm and the classification of Mexican-Americans as whites during efforts to prevent the full desegregation of the Austin public schools.

n103. See Martinez, supra note 100, at 215.

n104. White, Anglo-Saxon, Protestant (WASP).

n105. A particularly vivid and often ignored example of this oppression is the lynching of Mexicans in Texas which was critical to the oblation of Mexican privilege, presence and power. See Anzaldua, supra note 83, at 8-9; see also, David Montejano, Anglos and Mexicans in the Making of Texas, 1836-1986 (1987).


n107. In recent waves of Cuban migration the "marielitos," a label derived from the "Mariel boatlift," possess the popular image of poor, uneducated, mostly Black or mixed Cubans who were also members of the criminal and mentally ill classes. See Sandrino-Glasser, supra note 5, at 85-90. Earlier waves of migration constituted members of the upper class who were fleeing Cuba after Fidel Castro's takeover in 1959. For accounts of the history of exile see Maria Cristina Garcia, Havana USA: Cuban Exiles and Cuban Americans in South Florida, 1959-1994 (1996). For an excellent analysis of Cubans as a socio-historical and political identity and their relationship to the LatCrit project, see Max J. Castro, Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans, 2 Harv. Latino L. Rev. 179 (1997).

n108. See, e.g., Adarand Constructors v. Peña, 515 U. S. 200, 239 (1995) (Justice Scalia, J., concurring) (asserting the new infamous notion that in the U.S. the only race is the American race).


n110. See, e.g., Espinoza v. Farah Manufacturing Co., 414 U.S. 86 (1973) (dismissing Title VII claim by a lawful permanent resident from Mexico who was married to a U.S. citizen).


n112. In critical scholarship, the phrase "master narrative" has been appropriated from Audre Lourde's famous essay, The Master's Tools Will Never Dismantle the Master's House, in This Bridge Called My Back (Cherrie Moraga & Gloria Anzaldua eds., 1983), which addresses the problems of internalized oppression by pointing to the failure of a woman's rights conference to appreciate the need for race consciousness in any effort to speak on behalf of "all women." See also, Lisa C. Ikemoto, Traces of the Master Narrative in


n114. See, e.g., Montoya, supra note 14; Espinoza, supra note 87.

n115. See, e.g., Farber & Sherry, supra note 29.

n116. See Harris, supra note 97.


n118. In historical scholarship the notion of "women's agency" has been critical to the argument that gender is a meaningful and useful category of historical analysis, in which women are revealed in roles that transcend the view of them as passive objects, to a view of them as agents of their own location in particular events, times and places. Such a paradigm produces a feminist history which is more complete and nuanced, one in which women will appear as not just victims or heroines, but rather as individuals with the capacity for a full range of human character, from good to mediocre, to bad to evil, to brilliant, average and even stupid. See Joan Wallach Scott, Gender and the Politics of History 15-27 (1988).


n121. The concept of "voice" simply means the incorporation of personal narratives as part of the analysis, whether one's own personal stories and experiences or that of others. It differs from more traditional views of scholarship which suggest that a researcher and writer should be detached, formalistic and unbiased in the presentation of data, opinions, conclusions, etc. It has been at the heart of critical race, feminist, and now LatCrit scholarship to freely incorporate voice, or stories, to help illustrate a point or to inject one example of the voice of experience. As noted, among legal scholars the concept of voice remains controversial. See supra notes 17 and 29.


n123. The term braceros derives from the word brazos which means "arms" in Spanish. Recruitment of Mexican labor south of the border is a part of the hidden history that underlies the contemporary anti-immigrant fervor. Since early in the twentieth century the U.S. instituted immigrant quota laws and the U.S. Border Patrol with explicit exemptions for Mexicans. As a form of cheap labor, Mexicans were periodically recruited to work primarily the agricultural fields which were producing the food to feed U.S. citizens. In times of economic decline, like the Depression era, the Immigration and Naturalization Service (INS) would actively deport these same workers. In the World War II era, the cycle began again and an active "Bracero Program" brought in over 4 million Mexicans to work American farms and ranches. The bracero program officially ended in 1964 although the tradition of coming across the border for better wages and living conditions remained. See Davis, supra note 117.

n124. "Operation Wetback," named after the derogatory label for Mexicans who cross the U.S.-Mexico border by swimming across the Texas Rio Grande, was a 1954 military operation aimed at getting rid of illegal Mexicans in the U.S. and securing the southern border against the Mexican "invasion." Id. at 24.


n126. See Lourde, supra note 112.

n127. Espinoza, supra note 125 at 196.

n128. Francisco Valdes, Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal
Culture: From Practices to Possibilities, 9 La Raza L.J. 1, 28 (1996).

n129. Id.

n130. Id.

n131. Id.


n133. The Mexican-American Legal Defense and Education Fund (MALDEF) has litigated for social justice on behalf of Mexican-Americans and other U.S. Latinos for over two decades.


n135. Id. at 351-52.


n137. It is an example of the internalizing of the dominant Anglo oppressor's values for assimilated Latina/os and non-Latina/os alike in the U.S. to negatively view the speaking of "Spanglish," the use of English interjected with Spanish, and vice-versa, and/or the reconstruction of English words with Spanish inflections, endings, conjunctions and verb references. (e.g., "to mop the floor" is translated as mapear el piso in Spanish). Both politics and economics as minorities in a dominant culture explain why so many Latina/os are ashamed of speaking broken English, Spanglish, or Espa<tilde>nol mo<tilde>ch (broken). Growing Latina/o presence in certain regions of the U.S. help change those attitudes from shame to awareness of the "imperfect" diction in either language as a sign of accommodation to the dominant cultural needs while also trying to preserve one's cultural identity. In Texas, for example, San Antonio Tejano music stations freely broadcast in Spanglish and play both Mexican folk, country and English rock and pop to an audience that represents the heavily Mexican-American demographics of Central and South Texas. Similarly, a popular TV comedy, called Que Pasa USA?, which broadcasts weekly from Miami, realistically depicts everyday family life among Cubans of different generations using Spanglish and/or accented English. LatCrit scholars are forcefully exposing the language terrorism and vigilantism accomplished by the various forms of an English-only movement. See, e.g., Steven W. Bender, Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience, 2 Harv. Latino L. Rev. 145 (1997).

n138. "Fulana de tal" is the Spanish equivalent of a married Jane Doe, as de tal is used to identify a woman who is married (and belongs to) a certain tal.


n140. Id. at 335 n.14 (citing Richard Rorty, Contingency, Irony and Solidarity 3-69 (1989)).

n141. Id. at 336.

n142. E.g., Arriola, Gendered Inequality, supra note 12 (holistic/irrelevancy); Crenshaw, supra note 24 (intersectionality); Harris, supra note 14 (multiple consciousness); Hernandez-Truyol, supra note 15 (multidimensionality); Mari S. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 Women's Rts. L. Rep. 7 (1989). My partner has humorously applied these models of analysis to her own experience of discrimination as an older, female, non-skinny lesbian trying to get a job as a lawyer as the experience of being "multi-fucked."


n144. See supra note 13 for a discussion of controversial views uttered by Professor Lino Graglia, my colleague at the University of Texas.

n145. Hernandez-Truyol, supra note 143, at 311.


n147. See supra note 137.

n149. See, e.g., St. Francis College v. Al-Khazraji, 483 U.S. 1011 (1984) and its expansive interpretation of race discrimination to cover national origin but based on an odd use of 19th century social history which used race to categorize people on everything from skin color, to language, religion, national origin and ethnicity.

n150. See Hernandez-Truyol, supra note 143, at 320.

n151. See supra note 112 (explaining "master narrative").

n152. E.g., Yniguez v. Arizonans for Official English, 69 F. 3d 920 (9th Cir. 1995), vacated as moot 117 S.Ct. 1055 (1997) (invalidating English only amendment to state constitution on grounds of overbreadth under the First Amendment).


n154. See, e.g., Arriola, supra note 11.


n156. See Anzaldua, supra note 71, at 90.

n157. A promise to a saint or other sacred identity to fulfill an act, offering, sacrifice, pilgrimage, etc. in exchange for help in a time of crisis (e.g., medical illness, financial distress).

n158. See Valencia, supra note 41, at 454-56.

n159. The term marimacha is Mexican slang for lesbian.

n160. The omnipresent influence of Catholicism has been brought to my attention in my recent exploration of Mexican family law with Professor Patricia Beg<n> of the University of Guanajuato, with whom I taught a Competitive Family Law course at St. Mary's Law School. Despite a rigid formal separation between Church and State in Mexican law directly traceable to the 1914 Mexican Revolution, Mexico's family law scholars incorporate significant commentaries on the role of the Catholic Church in the definition of basic institutions (e.g., marriage) and practices regulated by the State.


n162. Activist poet, writer and scholar Ana Castillo argues that while the Catholic Church isn't the best guide for the future of Mexican and Amerindian women, rejecting its intolerant structures does "not automatically obliterate its entrenchment in our culture." Chicanoismo urged people to reclaim their "mexicanidad," to return to one's roots by not only rejecting total assimilation, but also by resurrecting every pre-Conquest and Catholic icon or symbol possible (e.g., Aztec names and calendars, La Virgen de Guadalupe). See Ana Castillo, Massacre of the Dreamers: Essays on Xicanisma 94-96 (1994).

n163. For example, in Chicano politics, the image of La Virgen de Guadalupe has played this role of encouraging pride and resistance. Id. See also Valencia, supra note 41.

n164. See Sanchez, supra note 161.

n165. Id. at 432.

n166. Sanchez notes the critical role of religious-based community organizing in bringing about the civil rights movement. Id. at 434. For an example of the role of the spiritually-based activism of Southern Black Christian women as critical to the civil rights movement, see Jo Ann Gibson Robinson, The Montgomery Bus Boycott and the Women Who Started It (1987).

n167. I define Latinismo or Latinism as the study and interest in Latina/o cultural ideas, values, beliefs and practices.

n168. See Rodriguez, supra note 84.

n169. See Ota, supra note 41.

n170. See Valencia, supra note 41.

n171. See Ota, supra note 41, at 439.

n172. See Valencia, supra note 41, at 453.
A good example is provided in the use of the terms "madrina" and "padrino" which are rooted in the baptismal event and identify the persons who are sponsoring the child into their membership in the Church. Among Mexicans, however, the madrina and the padrino are akin to members of one's extended families; they are persons who would be the logical equivalent of a guardian ad litem in American law if one were to look for the next best person to care for a child that has been abandoned or lost her parents. Id. at 459 n.23.

Even this description is complicated by the fact that there are gays and lesbians who do come to terms with the oppressive moral dictates of their childhood and who re-interpret aspects of the faith into their personal value system, but not without difficulty. Latina lesbians, for example, are unlikely to be very "out" in their sexual preference because of the heavy influence of our Christian heritage in our relationships to our mothers, our family and our community. See Ana Castillo, La Macha: Toward a Beautiful Whole Self, in Chicana Lesbians, supra, note 72, at 24. Some feminists, recognizing both the critical role Christianity plays in the identity of the Latina, whether she attends Church or not, and in Chicana/o politics, advocate a liberation theology which is informed by one's personal reality made up of standard Christian beliefs and the popular religiosity of Native American and African religious practices. It is a theology that transforms La Virgen de Guadalupe from a subservient image into a strong and powerful role model whose identity is traceable to the Goddess Tonantzi, revered by indigenous peoples for her sexual power to create and her strength to destroy - literally from Mother of God, to God herself. See Castillo, supra note 162, at 101 (discussing Isasi-Diaz & Tarango's Hispanic Women, Prophetic Voice in the Church); see also, Goddess of the Americas: Writings on the Virgen de Guadalupe (Ana Castillo ed., 1996).

Professor Valencia notes that one Biblical passage has been used by the oppressors of any kind of advocacy on
behalf of homosexuals and by the defenders of anti-subordination efforts on behalf of gays and lesbians. See Valencia, supra note 41, at 468.

n181. See discussion supra note 13; see also the discussion of Hernandez-Truyol's article Building Bridges III, supra notes 143-52 and accompanying text.


n183. 78 F.3d 932 (5th Cir. 1996).


n185. Hopwood, 78 F.3d at 946.


n187. Judge Smith stated that "to foster such diversity, state universities and law schools and other governmental entities must scrutinize applicants individually, rather than resorting to the dangerous proxy of race." Hopwood, 78 F.3d at 947. In the footnote that followed Judge Smith acknowledged, without much embarrassment, the white privilege embedded in non-racial, longstanding preferences like alumni status. Id. at n.31. He stated that the court, "recognizes that the use of some factors such as economic or educational background of one's parents may be somewhat correlated to race." Id.

n188. See supra note 4.

n189. See Coalition for Economic Equality v. Wilson, 122 F.3d 718 (9th Cir. 1997) (upholding constitutionality of Prop 209).


n193. St. Mary's University promotes its clinical programs as an example of the "hands-on approach to the work for justice." Other schools with the reputation of being committed to clinical pedagogy are Northeastern University Law School in Boston and The City University of New York Law School at Queens College (CUNY).


n195. Not coincidentally, progressive law professors gathering under the umbrella of organizations like SALT have been at the forefront of this effort to bridge the gap between theory and practice. The Fall 1997 SALT teaching conference was explicitly designed to introduce "traditional" professors to the benefits of "clinical" experiments in the classroom. See SALT Teaching Conference A Huge Success, SALT Equalizer, (SALT, Fort Lauderdale, Fla.), Dec.1997, at 4 (on file with author).

n196. The concept of "colorblindness" is derived from Justice Harlan's opinion in Plessy v. Ferguson: "our Constitution is color-blind, and neither knows nor tolerates classes among citizens," 163 U.S.
Professor Charles Lawrence has forcefully argued that contemporary legal doctrine and political discourse have transformed Justice Harlan's prescriptive ideal of colorblindness into an assertion that would deny that we continue to live in a racist society. See Charles R. Lawrence III, The Epidemiology of Color Blindness: Learning to Think and Talk about Race, Again, 15 B.C. Third World L.J. 1 (1995); see also, Berta Hernandez-Truyol, Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 Harv. Latino L. Rev. 199 (1997) (observing the hypocrisy of the colorblindness concept in a historical perspective).

n197. See supra notes 4 & 13 and accompanying text (explaining the SALT sponsored C.A.R.E. march against the resegregation of public universities).

n198. These are days when the learning environment is sluggish for a variety of reasons, including too few students having read the material, the complexity of a topic, a pattern of the same students dominating the discussion, boredom and resentment by other students, and so on. Professor Vernellia Randall, architect of many experiential learning techniques, argues that in that environment the work of the traditional professor is much too hard, too tiring and not nearly as effective. See Randall, supra at 194 (soo articles).

n199. See Part IV B, infra.


n201. It is not coincidental that members of the LatCrit community who are clinical professors make the most forceful calls for activist teaching and scholarship. For example, Margaret Montoya openly advocates activist teaching and activist scholarship and asks us to scrutinize our relationship to the dominant discourses and analytical practices in either teaching or scholarship which lull us into thinking that we should only produce conforming models of writing and pedagogy. Laura Padilla reminds us not to get so caught up in the ivory tower that we forget about our communities and about the possibilities for work that not only helps empower our communities but ourselves. These inspiring statements should encourage us all to risk the raised eyebrows we may invite when we design classroom linkages between, for example, outside political discourse (e.g., student anti-racism protests) and in-class theorizing about concepts like "equality," "discrimination," "oppression," "subordination," etc. See Montoya, supra note 9, at 357; Padilla, supra note 53, at 378. A similar forceful call to think more carefully about our classrooms, and what we are including or not, was made at LatCrit I by Stephanie Wildman, supra note 38, at 316.


n204. In school desegregation litigation "unitariness" means that segregation is removed from the public school system and there are no longer any significant tangible signs of inequality and racial inequity. In a unitary system, racial discrimination has been eliminated. Once there is a finding of unitariness, intentional discrimination is the standard for revoking a previous finding of unitariness. See U. S. v. Texas Education Agency, 467 F.2d 848, 870 (5th Cir. 1972).

n205. See, e.g., Washington v. Davis, 426 U.S. 229 (1976); Massachusetts v. Feeney, 442 U.S. 256 (1979); Guardians
In supervising my students I relied on the experiences I acquired right after law school as co-counsel in the reopening of Brown v. Board of Education of Topeka, Kansas (Brown III). By the late seventies and early eighties the litigation of Brown III was influenced by the sophisticated school desegregation law and practice which had been developed as federal judges began to oversee the dismantling of school systems allegedly operating as racially divided or "dual systems." The facts gathered in these cases were often very complex yet federal judges had developed fairly practical ways of identifying whether or not a school system could be viewed as presumptively illegal unless proven otherwise. Based on the city or town's racial demographics, courts typically determined whether a school's racial demographics fell either 15% above their representation in the city's population data, or 15% below. If for example, blacks in the community were 25% of the population and a school had a 60% black population in the school then one might see it as a racially identifiable minority school. If on the other hand their representation was 5% in a school then the school would probably be presumptively considered a "white" school, absent other data explaining the low representation of blacks. The convention was strictly viewed as a starting point of analysis in determining whether or not school systems were subject to challenges of racial discrimination and potential desegregation orders. Examples of the analysis are found in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). Cases like Keyes, illustrated that "duality" could be found even where the division was between whites and a racially mixed population (e.g., Blacks, Latinos and Asians). See Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973).

The Supreme Court has adhered to a heavy intent standard of proof for establishing a claim of discrimination under the Equal Protection Clause. See, e.g., Davis, 426 U.S. 229; Feeney, 442 U.S. 256. A compelling finding of discriminatory impact may provide a strong inference of discriminatory intent. See Metropolitan Housing Authority v. Arlington Heights, 429 U.S. 252 (1977) (setting forth various criteria which could be combined with evidence of discriminatory exclusion which would prove a violation of the 14th Amendment equal protection clause).


John Weikart & Stephen Shires, Elementary Schools in Austin, Texas, An Initial Finding of Facts and History of Integration in A.I.S.D. (Nov. 18, 1997) [hereinafter Weikart Report] (unpublished manuscript, on file with author). In AISD, the least experienced teachers have been assigned to predominately-minority schools, while most qualified and/or experienced teachers have been assigned to predominately white schools. These assignments were made by AISD under AISD's teacher assignment policies. Id. at 21. Mary Maldonado & Jennifer Cavner, Is Austin in Compliance with Brown?: A Study of One School District's Desegregation History (1997) [hereinafter Maldonado Report] (unpublished manuscript, on file with author). In 1986, the AISD Board adopted a new attendance plan following the decree of unitariness in 1983; this plan has resulted in a return of several racially identifiable schools. Id. at Section 6. Yolanda Cornejo, John Donisi, Margo Gara-tild,n n=a & Cullen McMorrow, Unlawful Segregation: Has Austin Complied with Brown II's Integration Mandate? A Comprehensive Study of Austin Independent School District (Nov. 19 1997) [hereinafter Cornejo Report] (unpublished manuscript, on file with author). The opening of new schools and further attendance zone changes have found Austin's middle schools becoming more and more segregated. Id. at 8. The policies the AISD currently utilized in selecting students for magnet, Advanced Placement, Honors, and Gifted and Talented programs creates a dual education system within schools. Id. at 28. Courtney A. Bowie, Tanya M. Clay and Ernest W. Cromartie, III, Austin Schools Project (Nov. 18, 1997)
[hereinafter Bowie Report] (unpublished manuscript, on file with author). Predominantly minority schools are given the same amount of funding and resources even though the original compromise in 1987 required that these schools be given additional resources to offset the detriment of being racially isolated. Id. at 42.

n210. See Maldonado Report, supra note 209, at Section 6.

n211. Id.

n212. Id.

n213. See Cornejo Report, supra note 209, at 8.

n214. See Maldonado Report, supra note 209, at Section 6.

n215. Id.

n216. Id.

n217. See Weikart Report, supra note 209, at 21.

n218. Id. at 23; Cornejo Report, supra note 209, at 17, 19.


n220. See Bowie Report, supra note 209 at 41.

n221. The evidence produced was so impressive that I supervised a second team of students who worked with me as independent researchers who expanded upon and drafted a summary report of the past work. This material will be donated to plaintiffs’ lawyers in an action challenging the discriminatory impact of Texas’ Education Agency’s standardized tests as well as to interested members of the public and legislators.

n222. Arguably, this divisive rhetoric is fed by the opinions of judges who refuse to acknowledge the existence of a multiracial society (e.g., Justice Scalia in Adarand, 515 U.S. 200, 222 (1995)) and by a jurisprudence of racial discrimination committed to analyzing the law from a perpetrator rather than a victim’s perspective. The former see racial discrimination not as conditions that must be remedied but as actions, or series of actions inflicted by the perpetrator on the victim. The victim perspective in contrast sees the problem will not be solved until the conditions associated with racial discrimination have been eliminated. See David Freeman, Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine, 62 Minn. L. Rev. 1049, 1052-53 (1978).

n223. See Lawrence, supra note 196.
Gloria Sandrino-Glasser *

BIO:

* Associate Professor of Law, California Western School of Law. J.D., Harvard Law School 1984; B.A. with Highest Honors, Rutgers College 1981. This Article is dedicated to my family, who has given me love and encouragement every step of the way, and to all Latinos/as, who have given me inspiration and motivation to research and write on this topic. I received more encouragement and assistance in the preparation and completion of this Article than I could possibly acknowledge. I am indebted to those who undertook the vast and unpromising task of commenting on earlier drafts of this Article. I am particularly grateful to my colleagues Robert Chang and Frank Valdes for talking through the inception of this Article with me. In addition, I owe special thanks to Stephen Glasser for his encouragement, support, and suggestions. Finally, I thank my research assistants, Aimee Caso, Bethany Caracuzzo, Rick Hartman, Kelly Langford and Dale Montpelier; the librarians at California Western, Jane Petitmermet, Linda Weathers, and Bill Bookheim; my secretary, Mary-Ellen Norvell; and photocopying specialist Vicky Pfeffer, all whom have been indispensable to this Article.

SUMMARY: ... The most significant variable is national origin. ... Cuban-Americans are the third largest national origin group of Latinos. ... They label this phenomena "racial formation" or "the process by which social, economic and political forces determine the content and importance of racial categories, and by which they are in turn shaped by racial meanings." ... For both political and statistical reasons, efforts to improve the coverage of the Latin American origin population led to the use of several items designating Latin American national origin or ancestry in the 1980 Census of Population and Housing (the 1980 Census). ... The legal equivalent to nationality is "national origin." ... "National Origin" and the Equal Protection Clause ... "National Origin" and Title VII ... Thus, the terms "national origin" and "ancestry" were considered synonymous. ... C. The Conflation, Title VII and "National Origin" ... Thus, national origin becomes a slippery construct used as a proxy for race. ...

[*71]

Introduction

I am not African.

African waters the roots of my tree, but I cannot return.

I am not Taina.

I am a late leaf of that ancient tree and my roots reach into the soil of two Americas.

Taino is in me, but there is no way back.

I am not European, though I have dreamt of those cities.

Europe lives in me but I have no home there. n1

As the poem above illustrates, the Latino/a n2 identity in the United States consists of multiple national and racial identities, which are often conflated or fused, but nevertheless essential parts of the whole. The conflation's residue is confusion: to isolate, to disempower, and oppress. Its Legacy: Los Confundidos. n3

In the poem, two Latinas, a mother and daughter, affirm and construct their Latina identity, with its rich racial and cultural mix, while deconstructing the popular myths of the dominant culture. The conversation illustrates the conflation of Latinos' race and nationality, with one woman referring to race and the other to nationality. The confusion is obvious; but the conceptual and ideological mixtures that underlie the confusion are powerful. As Suzanne Oboler notes, "reading [this] poem, one is struck by the ways in which both self (I am what I am) and other (I am not what I am not) are fundamental to the construction of the identities of these individual Latinas - and, one might say, to the ethos of the (Latino) [*72] group."
This Article explores the conflation of Latinos' race and nationality in American law and society. Like the poem above, this Article attempts to expose the conflation of these two constructs, from its historical roots to its present formalized and institutionalized status, to demonstrate the way the dominant culture has utilized the conflation to homogenize, and thus negate, marginalize, and silence Latinos.

The conflation of Latinos' race and nationality illustrates how the dominant culture has used and continues to use its power to attempt to define and dominate the "Others." n6 In America, the rules that define "race" have been white rules, "even though African-American culture has had a great, though generally unacknowledged, impact on white culture and perhaps on concepts of race as well." n7 Thus, these rules have always existed in a black/white Pdgm. n8 As such, when these rules have been and continue to be applied to Latinos, the dominance/subordination process nurtures the conflation in an effort to dominate and oppress. As Frank Valdes says in his thoughtful and powerful work on the conflation of sex, gender, and sexual orientation: "[the conflation] creates and reinforces artificial and oppressive dictates and distinctions that affect all of us." n9

[*73] The identification and deconstruction of the conflation and its effect on law and society is significant because of growing numbers of Latinos in American society. Latinos are currently the fastest-growing segment of the United States population, numbering almost 22.8 million in the early 1990s. n10 A systematic demographical examination of Latinos reveals a high rate of population increase, from 6.4% of the population in 1980 to 9% by 1990 (see Table below). n11 This is a result of above average rates of immigration and reproduction during the last two decades. n12 It is expected that by the year 2005 the Latino population will be the largest minority population in the United States. n13

This Article will focus on the three largest Latino subpopulations: Mexican-Americans, n14 mainland Puerto Ricans, n15 and Cuban-Americans. n16 Although Latinos are often united by language and culture, the population is far from monolithic. Thus, the discourses emerging from each of these different nationalities and spates of migrations are vitally different. n17 The concept of monolithic "pan- [*74] Hispanism," n18 so vigorously espoused by the dominant culture, does not do justice to this diversity. The use of the conflationary term "Hispanic" n19 to categorize Latinos distorts the origin and roots of these populations, preventing and excusing the dominant culture from understanding, acknowledging, and taking into account all the complexities of the Latino culture.

The conflation emerged in nineteenth century America, with the incorporation of the first Latino subpopulations in American society. In 1848 and in 1898, respectively, part or all of the Mexican and Puerto Rican national territory was confiscated as a result of expansionist policies of the United States. Early literary accounts by Anglo-Americans describe the Mexicans as lazy and backward, attributing their lack of intelligence and motivation to the Mexican "race." By the twentieth century, these conflationary images were formalized by government agencies and scientific institutions, and most importantly by the United States Census, with the creation of the label "Hispanic."

The impact of the conflation of Latinos' race and nationality on American law and society is not subtle. The white-created image of Latinos riddled with stereotypes, myths, and half-truths, has had a significant role in explaining the historical treatment and current condition of Latinos. n20 The conflation's divisive force has provided the fuel for the dominant culture to absolve themselves and blame Latinos for existing social and economic inequalities. n21

[*75] This Article de-conflates Latino's race and nationality in American law and society. Part I begins with a demographic portrait of the Latino population, in an attempt to dispel the legacy of homogenization. Part II provides an overview of the conflation. Part III starts with the historical roots of the conflation in the nineteenth century, detailing the conflationary images of each of the Latino subpopulations. Next, it traces the conflation to the twentieth century, detailing its formalized and institutionalized status. Part IV examines the operation of the conflation in contemporary jurisprudence. Part V provides an overview of the legacies of the conflation in law and society. Lastly, Part VI addresses the themes, perspectives and new directions of critical race theory in light of the conflation of Latino's race and nationality.

I. Latinos: A Demographic Portrait

A. Latinos: Dispelling the Legacy of Homogenization

The perceived homogenized Latino population in the United States is in reality a group of distinctive subpopulations that exist because of a myriad of variables that divide the so-called "Hispanic
population."

n22 The most significant variable is national origin. n23 The three largest subpopulations are Mexican-Americans, mainland Puerto Ricans, and Cuban-Americans. n24 In the mid-1990s Mexican-Americans made up nearly two-thirds of the United States Latino population, mainland Puerto Ricans almost 11 percent, and Cuban-Americans almost 5 percent. n25 In addition to their different places of origin, these three subpopulations also have diverse histories and heritages.

The second variable that distinguishes the Latino subpopulations, other than their histories and cultural forms, is their race: Latinos have an ancient and proud ancestry of predominantly Native American, but with significant Spanish and African infusions. n26 It has been difficult to classify Latinos due to the confusing categorization used over the years by the United States Census. n27 For example, as discussed later, in the 1980 United States Census, Mexican-Americans, Puerto Ricans, and other Latinos became homogenized into a "super" ethnic group: they were listed along with other national descent groups, and they were also in a separate category, sometimes as a "race," along with white, black, and other nonwhite. n28

[*77] The third variable is the method of incorporation in United States society. Except for the recent Mexican immigrants, the Mexican-American and Puerto Rican presence in the United States resulted not from migration of people from Mexico to the United States, but from conquest. n29 By contrast, Cuban-Americans are immigrants which have migrated to the United States due to political upheaval and economic distress on the island of Cuba.

The fourth variable is geographic distinctiveness. Each of the three Latino subpopulations has been the dominant Latino group in a particular portion of the United States. Mexican-Americans live traditionally in the Southwest, and particularly in the border states of California, New Mexico, and Texas. Mainland Puerto Ricans live in largest numbers in the New York metropolitan areas, and Cuban-Americans, for the most part, live in Florida. n30 Each of these "Latino areas" are different economically, socially, and politically - and these differences are important in two ways: (1) understanding the special characteristics of each Latino subpopulation, and (2) dispelling the homogenization process.

B. Los Confundidos: Who are We? (¿Quién Somos?)

1. Mexican-Americans: The Native Sons and Daughters

I am Chicana Waiting for the return of la Malinche, to negate her guilt, and cleanse her flesh of a confused Mexican wrath

[*78] which seeks reason to the displaced power of Indian deities.

As the poem above illustrates, Mexican-Americans have an ancient and proud ancestry, predominantly Native American, but with significant Spanish and African components. This racial, cultural and ethnic mosaic is trying to find its identity in light of another conquest. In the poem, Sylvia Gonzalez uses "la Malinche," a Mexican mythical figure often associated with the Aztec past, "mestizaje," and violence of the conquest. n32 and Catholic cross in redemption of all her forsaken daughters. n31

The history of Mexican-Americans is unlike that of any other minority group. n34 Mexican-Americans became a minority not by immigrating or being brought to this country involuntarily, but by conquest. It was conquest that set the stage for the large-scale immigration from Mexico in the early twentieth century.

By 1900 the basic Mexican settlements were well established in the American Southwest. n35 Peak immigration periods have been 1910-1930, 1942-1954, and 1965 to the present. n36 Between 1821 and 1991, approximately 3.3 million documented migrants entered the United States; since the 1920s somewhere between 6 and 9 million undocumented immigrants have also entered. n37

The entry into the United States of low-wage undocumented Mexican labor has periodically met considerable public opposition. Although growing concern among nativist Anglo-Americans led to the passage of the 1965 Immigration Act, which included restrictions on legal Mexican immigration, n38 the United States economy depend heavily on undocumented immigrants. n39 As Pastora San Juan Cafferty notes, illegal immigrants are not solely Mexicans, "the others come from other countries, including Korea, Taiwan and the Phillipines...
Immigration is perceived as Mexican immigration because of the emphasis placed on apprehending Mexican immigrants. n40

During the 1960s and 1970s Mexican-American ethnic consciousness first emerged through the Chicano movement. n41 Many Mexican-Americans joined the new La Raza Unida Party (LRUP), which tried to achieve representation of all people by a local government that served the needs of individual communities as well as an end to poverty and injustice. n42 By the 1980s Mexican-Americans were identified no longer with the LRUP but rather with the State Democratic party. Yet, LRUP had brought about democratization of some southwestern communities, raised political consciousness of many Mexican-Americans, and prompted Mexican American political participation. n43

2. Mainland Puerto Ricans: The Undecided

Born in the Bronx, not really jibara
Not really hablando bien
But yet, not Gringa either
Pero ni portorrica, pero si portorrica too
Pero ni que what Am I? n44

As the poem above illustrates, mainland Puerto Ricans' identity is one that is "neither here, nor there." Puerto Ricans' ability to travel back-and-forth between the island and the mainland has created a Latino subpopulation which is in search of a bicultural identity.

Puerto Rico was once part of the Spanish empire, but for nearly a century it has been a commonwealth of the United States. n45 After the Spanish-American War, Spain gave Puerto Rico to the United States under the Treaty of Paris in 1899. n46 Puerto Rico was particularly attractive to the United States for two reasons: (i) it was historically the richest coffee-producing island in the Caribbean, and (ii) its geographical location made it of strategic military importance. n47 In 1917, the Jones-Shafroth Act (called the Jones Act) gave Puerto Ricans United States citizenship and made them eligible for the military draft. n48

Puerto Ricans made their way to the mainland, specifically New York, as early as the nineteenth century. n49 Mass migration began only after World War II, but then rapidly accelerated. n50 For exam ple, in 1900, some 2,000 Puerto Ricans lived on the mainland; most of these in New York City. In the late 1940s, immigration quadrupled. n51 East Harlem became "Spanish Harlem" and closely identified with Puerto Ricans. n52 Jack Agueros describes the impact of the Puerto Rican mass migration on the mainland:

[World War II] ended and the heavy Puerto Rican migration began... Into an ancient neighborhood came pouring four to five times more people than it had been designed to hold. Men who came running at the promise of jobs were jobless as the war ended. They were confused. They could not see the economic forces that ruled their lives as they drank beer on the corners, reassuring themselves of good times to come while they were hell-bent toward alcoholism. The sudden surge in numbers caused new resentments, and prejudice was intensified. Some were forced to live in cellars, and were then characterized as cave dwellers. Kids came who were confused by the new surroundings; their Puerto Ricanness forced us against a mirror asking: "If they are Puerto Ricans, what are we?" and thus they confused us. In our confusion we were sometimes pathetically reaching out, sometimes pathologically striking out... Education collapsed. Every classroom had ten kids who spoke no English. n53

Like the Mexicans and African-Americans, by the mid-1960s Puerto Ricans began to organize politically. The Puerto Rican Forum and Aspira began to address the problems confronting Puerto Ricans on the mainland. n54 Although Puerto Ricans have made some strides in the federal level, n55 the long-term effects of institutional discrimination are highly noticeable in state and city government employment, where Puerto Ricans are significantly underrepresented. Studies show that government services have historically been less accessible to Puerto Ricans, and job training and employment services have been scarce in Puerto Rican communities. n56

In recent times, Puerto Ricans have been plagued by what some have called the "revolving door" migration. n57 This back-and-forth migration has evolved due to a series of recessions, either in the United States or Puerto Rico, deteriorating neighborhoods and poor living conditions on the mainland, combined with the ability to freely go back and forth due to their citizenship status. The flow of returning people is important for two reasons: (i) this "restlessness" n58 has produced a different type of identity for Puerto Ricans, than that of Mexican-Americans and Cuban-Americans, an identity that is centered in Puerto Rico, and (ii) it has given Puerto Ricans a Latino ethnic consciousness that is stronger than that of other Latino subpopulations. n59

3. Cuban-Americans: Last to Come, Most to Gain
SHE:... How about some steamed broccoli...
ELLA:... arroz...
SHE:... yogurt...
ELLA:... frijoles negros...
SHE:... bean sprouts...
ELLA:... Platanos fritos...
SHE:... wheat germ...
ELLA:... ensalada de aguacate...
SHE:... raw carrots...
ELLA:... flan!
SHE:... Granola!
ELLA:... Tal vez un arroz con pollo, o un ajiaco! n60

An excerpt from a Cuban play above captures the Latina alternating cultural words to illustrate that the characters function as ethnic stereotypes. The "She" character is the Anglo-American, while "Ella," the Cuban-American, is trying to recapture her Cuban roots with the use of typical Cuban foods. n61

[*86] Cuban-Americans are the third largest national origin group of Latinos. Like Puerto Rico, Cuba was acquired by the United States as a consequence of the Spanish-American War of 1898. n62 Unlike Puerto Rico, the United States intervention only lasted until 1902, when Cuba won its independence. n63 Between 1902 and 1959 Cuba floundered politically, since it had no experience with democracy. Although the political turmoil was at times severe, n64 the Cuban economy experienced tremendous growth during this period. n65 Fortunately, the benefits derived from this economic growth were not equally distributed among the island's population, thus creating the perfect arena for the "Castro Revolution" in 1959. n66

The migration of large numbers of Cubans to the United States occurred after Cuba's 1959 revolution. n67 Initially the victory of Fidel Castro, a young rebel leader, brought hope for social, economic, and political reforms. However, that hope began to dwindle with the enactment of land grants to tenant farmers, guaranteed compensation to small sugar growers and the nationalization of public utility companies. n68 These reforms were not in the interest of Cuba's business, industrial, and political elites. As Joe R. Feagin and Claireece Bocher Feagin argue:

Exaggerated views of the Cuban revolution's threat to U.S. business and political interests, suspicions that Castro was a Communist, and Castro's declarations that he would not tolerate manipulation of Cuba by the U.S. Government led to open U.S. hostility toward Cuba, a break in diplomatic relations between the two countries, and a U.S. policy of welcoming refugees from Cuba's "Communist oppression" to the "free world." n69

From 1959 to the late 1970s there were three waves of immigration of Cubans to the United States. The 1959 to 1962 era of [*88] Cuban immigration is often referred to as the wave of "Golden Exiles." n70 This refers to the belief that the vast majority were former members of the elite classes in Cuba. This concept is partly correct. The first wave of Cuban immigrants were Cuba's elite: former government officials, bankers, and industrialists who had done well under the previous dictatorship and feared Castro's reforms. n71 The second wave started in 1961, when large numbers of middle- and upper-income Cubans came to the United States. These exiles were middle-level professionals, managers, merchants, and over half of Cuba's doctors and teachers. n72 Both of these waves of Cubans consisted of white or light-skinned Cubans.

As with earlier Cuban immigrants, south Florida is where these exiles chose to settle. In their minds, south Florida, only 90 miles from Cuba, was the logical destination, since they were planning to go back to Cuba after the overthrow of Castro's regime.

In 1961, to provide for the immediate needs of the Cuban refugees, the Eisenhower Administration created the Cuban Refugee Emergency Center in Miami and allocated $1 million in federal funds. n73 This aid was later expanded by the Kennedy Administration in the form of the Cuban Refugee Program that assisted refugees with resettlement, helped them locate employment, and provided for maintenance, health services, education and training programs. n74

[*89] After what has been called the "missile crisis hiatus" n75 from 1962-65, a third stream of Cuban immigrants totaling more than 250,000 arrived between 1965 and the late 1970s. n76 Many relatives of those refugees already in the United States were allowed to leave from the Cuban port of Camarioca in 1965 aboard hundreds of boats arriving from Miami. This flotilla exodus was followed by an airlift agreement between the United States and Cuba, n77 which established the flights that became known as the "Freedom Flights." n78

A fourth wave of Cuban immigrants arrived in 1980, in what is generally known as the "Mariel boatlift." n79 Popular images characterized the Mariel refugees as undesirables - poorer, less educated and mostly black n80 or mixed Cubans, with a large percentage being
either criminal or mentally ill. n81 This group included some who left [*90] voluntarily and others who were forced to leave because they were considered undesirable by the Cuban government.

The last wave of Cuban immigrants arrived in the summer of 1994. n82 Known as the "Cuban boat people," they arrived by boats or rafts after the Cuban government lifted its ban on emigration in 1994. n83 Reversing its three-decade-old policy, the United States stopped admitting Cubans and sent them instead to camps at Guantanamo Bay Naval Station. n84 In a negotiated agreement, the United States agreed to increase to 20,000 the annual numbers of visas granted to Cubans, while the Cuban government agreed to ban mass exodus of Cubans to the United States. n85

II. THE CONFLATION: AN OVERVIEW

This Article examines the conflation of Latino's race and nationality in United States society and law. The conflationary concepts of nationality and race are not only central in understanding the status of Latinos in American society and law, but also the larger question of race in these two arenas. n86 Michael Omi and Howard [*91] Winant suggest that race, together with class and gender, has always been at the very center of America's social and political history. n87 As T. Alexander Aleinikoff notes, "in our society, race has not been a benign mode of classification." n88 The designation of one's race has had a double function, both defining social categories and assigning characteristics to members of those categories. n89

The historic fusion and confusion of these two concepts has allowed "white America," n90 as the dominant culture, to develop racist [*92] stereotypes n91 about Latinos, while depriving them of their "pre-migratory cultural heritage." n92 While Latinos' commonalities are [*93] emphasized by the stereotypes, n93 their internal diversity shaped by historical differences and diverse experiences of incorporation are rarely acknowledged. Moreover, class experiences are homogenized, and linguistic, racial and ethnic groups within the different nationalities are neglected.

The conflation and its impact on both American society and law is disturbing because the Latino community is exceedingly heterogeneous in terms of its national origin, n94 social class, n95 socioeconomic status, n96 and method of incorporation in the United States. n97 Latinos [*94] are also racially heterogeneous. A substantial portion of Latinos are descendants of indigenous Amerindian n98 peoples, European colonizers, black slaves brought from Africa, and immigrants from other parts of the world. n99 Thus, the conflation has managed to reduce Latinos to an American racialized group, n100 regardless of their historical or racial identities.

[*95] To introduce the evolution of this conflation, this overview provides the context in which the conflation flourished and continues to flourish, and gives a summary of the conflation as it relates to the three largest Latin American origin groups in the United States - Mexican-Americans, Puerto Ricans, and Cuban-Americans - individually, and collectively, under the label of "Hispanics." n101 Finally, the overview concludes with a general consideration of the conflation's significance to legal doctrine, culture, and theory.

A. The Conflation in Context

The context in which the conflation has operated and continues to operate has had a great impact on the success of the conflation in American law and society. As Martha Minow and Elizabeth Spelman assert:

It is not the familiar competition between the universal and the particular that motivates our interest in context. Like others concerned with the failures of abstract, universal principles to resolve problems, we emphasize "context' in order to expose how apparently neutral and universal rules in effect burden or exclude any [*96] one who does not share the characteristics of privileged, white, Christian, able-bodied, heterosexual, adult men for whom those rules were actually written. It is the particular particularities associated with legacies of power and oppression that we mean to highlight by the interest in context. In so doing, we aim to question the distinction between abstraction and context, while also paying attention to the risk that calling our concerns "contextual' in fact may bury them and remove their political implications. Yet, we are equally interested in the charge that an emphasis on context undermines capacities for political, moral, and legal judgments. n102

The creation and evolution of the conflation in American law and society must be examined in the sphere of "neutral" and "universal" standards, formulated in nineteenth century America and perfected in the twentieth century. n103 These standards according to which the foreign Others were and continue to be normalized, though considered to be neutral and universal, are, in fact, culturally and experientially specific standards of the dominant group. n104 [*97] Moreover, the application of these standards allows the dominant group to simultaneously universalize itself and particularize the foreign Other. n105 One such standard in nineteenth
century America was the standard of expansion, which has been justified by some historians as necessary for the spreading of democracy. In the case of the Mexican-American War in 1847, Justin H. Smith wrote:

At the beginning of her independent existence, our people felt earnestly and enthusiastically anxious to maintain cordial relations with our sister republic, and many crossed the line of absurd sentimentiality in the cause. Friction was inevitable, however. The Americans were direct, positive, brusque, angular and pushing; and they would not understand their neighbors in the south. The Mexicans were equally unable to fathom our goodwill, sincerity, patriotism, resoluteness and courage; and certain features of their character and national condition made it far from easy to get on with them. n106

Rodolfo Acuña argues that Smith's justification for the Mexican-American War is that "Mexicans cannot understand or appreciate the merits of a free society... domestic war or repression, is justified by the same kind of rhetoric that justifies international aggression." n107

The justification for the Mexican-American War in 1847 was rooted in America's self-definition as a nation. The United States population in the mid-1840s, which was comprised of 17 million people of European extraction and 3 million slaves, was much larger than Mexico's 7 million, of which 4 million were Indian and 3 million mestizo and European. n108

America's self-definition as a nation cannot be separated from its past and present social relations of domination and power. n109 One account of the Mexican-American War expressly makes the connection between domination, power, and race. As Arnoldo De Leon notes referring to Stephen F. Austin, an advocate of the war:

To Austin, redemption could come by "whitening" Texas - or, phrased differently, by making it a cultural and racial copy of the United States. In August 1835, he wrote that the best interests of the nation required "that Texas should be effectually, and fully, Americanized - that is - settled by a population that will harmonize with their neighbors on the East, in language, political price [n99] ples, common origin, sympathy, and even interest." It was well known, he continued, that his object had always been to fill up Texas with a North American population. "I wish a great immigration from Kentucky, Tennessee, every where, passports or no passports, any how. For fourteen years I have had a hard time of it, but nothing shall daunt my courage or abate my exertions to complete the main object of my labors - to Americanize Texas. This fall, and winter, will fix our fate - a great immigration will settle the question.' n110

The American national identity n111 had ideological strains which were rooted in the nature of the events that brought the nation to birth. The separation of the colonies from Great Britain by the Declaration of Independence and the American Revolution created the need for a national consciousness - "the spiritual counterpart of the political entity that had come into being." n112 This national consciousness did not include Blacks or Native Americans, and in time other racial and cultural groups were regarded as falling outside of the [n100] spectrum of American nationality. The tried and proven lessons of this history reveal that the pragmatic exaltation of the nationalist agenda over the Latin origin groups was easily taken at face value, thus perpetuating exclusions.

The American national identity came to be "imagined" as white, Protestant and Anglo-Saxon, despite the presence of not only non-Anglo-Saxon and Catholic Europeans, but also of Native Americans and other classes, races, and national origins. n113 Benedict Anderson proposes that a nation is an "imagined political community" because "the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion." n114 Anderson argues that "nationality... nation-ness, as well as nationalism, are cultural artifacts of a particular kind." n115 Anderson maintains that once created, these cultural artifacts become modular, "capable of being transplanted, with varying degrees of self-consciousness, to a great variety of social terrains, to merge and be merged with a correspondingly wide variety of political and ideological constellations." n116

As we track the evolution of America's identity, Anderson's theme of an "imagined community" is pertinent. In the nineteenth century, "cultural artifacts" embodying the meaning of America's nationality were molded to define people of Latin American origin in the United States as "homogeneously "foreign' to the image of "being American,'... regardless of the time and mode of their incorporation into the United States or their subsequent status as citizens of this nation." n117 Particularly in the years following the Civil War, when America grappled with the legacy of slavery and tried to formulate imagined boundaries of inclusion and exclusion in the national community, people of Latin American origin became regarded as "foreign Others." n118 The dominant cultural understanding
and [*101] experience of the nation universalized itself as the inevitable self-definition - marking the culture of the marginal as the "foreign Other," either to be excluded or "normalized." n119

This perception of "foreign Others" with respect to Latin Americans was the product of international and domestic forces in the nineteenth century. n120 Internationally, the dominance/subordination process of the nineteenth century was justified under the call for expansion. Domestically, the boundaries of exclusion were institutionalized through the formal conflation of race and nationality.

Currently, important segments of our society now recognize multicultural diversity positively. n121 Nevertheless, the actual embodiment of that diversity in the American national identity has yet to be realized. In both society and law, Latinos are still perceived as racialized "foreign Others" and have yet to receive the social justice and equitable distribution of power, privileges, and resources.

1. The Conflation: Parts of the Whole

The conflation of nationality and race in the case of Latin American origin populations in the United States results in "Latin American origin" being considered as a "race" instead of a nationality. This is particularly significant with respect to Mexican-Americans and Puerto Ricans because their nationality has been "American" since the nineteenth century. n122

Indeed, when discussing the subject of Latin American origin groups in the United States, a distinction must be made between the "colonized" Latin American origin communities and the "migrated" Latin American origin communities. The first category comprises of Mexican-Americans, as well as Puerto Ricans who live on the mainland. The second category reflects the waves of migration that, for political or economic reasons, have brought to the United States Cubans, Central Americans, and South Americans.

The conflation between nationality and race can be traced to the three largest Latin American origin groups: Mexican-Americans, Puerto Ricans and Cuban-Americans. This is the case although each of these groups differ sharply in historical experience, socioeconomic status, and identity. n124 Thus, this Article will trace the conflation as it pertains to Mexican Americans, Puerto Ricans, and Cuban Americans.

Although the end result is the same, the evolution of the conflation in each Latino origin group is distinguished by its distinct historical and cultural experiences and unique set of geographically varied ecological adaptations. Thus, the evolution of the conflation is rooted in their colonial past. The United States victories in the Mexican American War and the Spanish American War brought both Mexicans and Puerto Ricans, respectively, into the domain of the United States. n125 Mexicans living in the newly acquired United States territory and Puerto Ricans, were designated as Americans by the Treaty of Guadalupe Hidalgo (1848), n126 and the Treaty of Paris (1898), n127 respectively. In contrast, Cubans have been largely incorporated into United States society as refugees fleeing Communism since Fidel Castro took power in 1959.

2. The Conflation Institutionalized: The Sums of All Parts

The conflation became institutionalized in the 1970s with the creation of the term "Hispanic" by the federal Office of Management and Budget (OMB). n128 The operational definition of the term "Hispanic" was: "A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race." n129 Thus, the term "Hispanic" combines colonized natives and their offspring, foreigners and political refugees under one ethnic umbrella. Even though the operational definition provides that Hispanics may be of any race, the concept and its usage have racial connotations. For example, a New York Times article that discussed the results of the 1990 census reported a profound change in the racial composition of the United States - with almost a quarter of Americans having African, Asian, Hispanic or Native American ancestry. n130

The term or label "Hispanic" has stimulated and provoked quite a conversation. Martha E. Gimenez asserts:

The label deprives all Latin Americans of their national identities, which, though they have been used to develop racist stereotypes, are less likely to create the presumption of racial distinction. In my view, the fact that the heterogeneity of the Hispanic population is generally not taken into account, contributes to its assuming a racelike character in social, scientific and everyday discourse that strengthens the development of racist stereotypes. n131

Many of these critics have suggested that the term "Latino" best describes the Latin American origin populations in the United States. n132

The label Hispanic was further institutionalized by the U.S. Bureau of Census in 1980 and 1990. The "Hispanic" label fully formalizes the conflation of
Latinos' race and nationality. The label [*104] imputes on Latinos a contrived Hispanic "race," while minoritizing them in the process. The label serves to accomplish on a formal level, what the conflationary stereotypes accomplish on an informal, thereby creating a misleading and racist characterization of Latinos. Since the label does not identify a "race," then the heterogeneous population cannot be understood without necessarily falling into stereotyping. n133

B. The Conflation: Concepts and Definitions

My point of departure is that nationality, or as one might prefer to put it in view of that word's multiple significations, nation-ness, as well as nationalism, are cultural artifacts of a particular kind. To understand them properly we need to consider carefully how they have come into historical being, in what ways their meanings have changed over time, and why, today, they command such profound emotional legitimacy.

- Benedict Anderson In my life the chief fact has been race - not so much scientific race, as that deep conviction of myriads of men that congenital differences among the main masses of human beings absolutely condition the individual destiny of every member of a group.

--W.E.B. Du Bois

Nationality and race are central constructs which have molded the place of Latinos in United States society and law since the nineteenth century. As suggested by Benedict Anderson and W.E.B. Du Bois, the histories and meanings of both of these constructs n134 are nonfixed, fluid and situational. That is, human interaction has been the source and continued influence for the evolution of both constructs.

1. Nationality

In this Article, nationality has two meanings. On one hand, it refers to an individual's country of birth or origin. This meaning of nationality is similar to the legal concept of "national origin." n135 The other meaning of nationality is socially constructed. n136 As Alfred Cobban contends, "[nationality is] variable and malleable." n137 [*105] In the nineteenth century, "American nationality" came to be imagined as white, Protestant, and Anglo-Saxon, thus negating the existence of Native Americans, African-Americans, Asians, Caribbeans, and Latin Americans of varying classes, races, and national origins. n138 This image of "American nationality" is still part of the dominant culture today. As Suzanne Oboler argues, by the twentieth century "regardless of citizenship status, non-white European racial minorities born in the United States could continue to be conceived in the popular mind as outside of the "boundaries' of the "American' community." n139

The conflation of Latinos' race and nationality coupled with the American "imagined community" served to exclude Latinos from the "boundaries" of American community and construct a meaning of "nationality" with respect to Latinos. n140 Even when Mexicans and Puerto Ricans were granted United States citizenship, n141 they were not included in the imagined community, instead they were racially perceived as "foreign Others." n142 Thus, "nationality" with respect to Latinos continues to be confused with racial categorization, purporting to identify a racially distinct group, instead of a country or place of origin.

2. Race

In order to understand the conflation, it is important to define "race." The term "race" has been defined and debated in the United States in a bipolar manner, with a fixed, concrete definition of race on one end of the spectrum, n143 and as an ideological con [*[106] struct on the other. n144 Jayne Chong-Soon Lee asserts that, "historically, the terrain of race has shifted between definitions of (1) race as biological characteristics, historical commonality, or essential identity, and (2) race as the erroneous categorization of people, or the false attribution of traits to people." n145 Lee argues that both of these definitions "locate race as an attribute within people rather than as a complex set of relations between people." n146 Moreover, these definitions fail to take into account how race is defined not by its inherent meaning but by the social contexts through which it is constructed. n147

Race is socially constructed. n148 These social contexts connote some sort of human interaction or manipulation as the foundation for [*107] racial categorization. Michael Omi and Howard Winant argue that we should stop thinking of race "as, an essence, as something fixed, concrete and objective." n149 They suggest that we instead think of "race as an unstable and 'decentered' complex of social meanings constantly being transformed by political struggle." n150 They label this phenomena "racial formation" or "the process by which social, economic and political forces determine the content and importance of racial categories, and by which they are in turn shaped by racial meanings." n151
This Article will illustrate the formation of the Latino "race" by examining the conflation of nationality and race in connection with Latin American origin populations in the United States.

3. Other Definitions

This Article will use several terms consistently to describe cultural groups in American society, beginning with "Indigenous American" or "American Indian." These are umbrella terms that capture many different cultural groups, the members of whom often prefer to be identified by their nation, people, or tribe rather than generically as an "Indian." Unlike other superclassifications, "American Indian" captures a collection of groups that have something essential in common: recognition by the federal government as sovereign entities. I avoid the misleading term "Native American," which defines non-Indians born in North America as aliens to this land.

I use "Black" or "African-American" interchangeably to reflect that both terms remain current in that community. I capitalize these terms to reflect that they describe a cultural group rather than a mass of people with only a physical feature in common.

I will use "Anglo-American" as a capitalized term because in the Southwest this term is used to describe a group considered one cultural community. I leave "white" uncapitalized because I believe that the term "white" does not describe any cultural subgroup. The terms "Anglo" and "white" capture the difference between an "Anglo" community that consists of persons who see themselves as the mainstream American society, and many "white" groups, possibly including Mormons, Russian-Americans, Jews, or Greek-Americans, who may remain culturally separate from the Anglo mainstream, but not racially subordinated.

I use "Asian/Pacific Islander" only to describe the collection of groups lumped together under that label.

III. De-Conflating Race and Nationality in United States Society

The conflation of race and nationality in connection with Latin American origin groups emerged in nineteenth century America. Some Latino scholars believe that the manner in which nationality and race were fused in the treatment of Mexican Americans, Puerto Ricans, and Cubans is best exemplified in the expansionist policies and ideologies of the era. In 1823, the Monroe Doctrine announced to the world that "the Americas were no longer open for colonization or conquest; however, it did not say anything about that limitation applying to the United States." Although the Doctrine's declaration was initially an economic one, rather than political, the United States used the Doctrine as the rationale for hemispheric conquest. Victor Valenzuela argues that, "by the end of the nineteenth century, the Monroe Doctrine was used freely by the United States to seize, to control or to intervene openly in the affairs of Latin American countries." As Suzanne Oboler concludes:

Thus the Monroe Doctrine had in effect early on begun to establish a homogeneous approach to relations between the United States and Latin American nations and was to have far-reaching implications in forging a public American identity in relation to the other emerging nations in the hemisphere.

The conflation was further fueled by the development of the ideology of the nation's "Manifest Destiny," which substantiated the nation's rationale for hemispheric conquest. The term, which had its roots in Puritan ideas, effectively declared the superiority of the white Anglo-Americans. As Rudolfo Acuña states: "their mission, their destiny made manifest, was to spread the principles of democracy and Christianity to the unfortunates of the hemispheres. Thus, the racial connotations of the Manifest Destiny-based rationale for the Mexican-American War and the subsequent annexation of the Mexican territory - highlighting the superiority of Anglo-Americans and the inferiority of the "mongrel" Mexicans - began to establish a national identity where the conquered race was relegated to a lower level than that of the conquering race. Moreover, the national identification of Latin Americans was supplanted by a racial one.

The examples of the conflation in nineteenth century America demonstrate the extent to which the expansionist policies and ideologies of the era forged the fusion of race and nationality. Mexican-Americans, Puerto Ricans, and later Cubans were saddled with the inferior homogeneous identity of Latin Americans created during mid-nineteenth century.

A. The Conflation in the Nineteenth Century: The Roots of Constructed Hispanic Homogenization

1. From Natives to "Cholos," "Greasers" and Mustachioed Banditos: Early Portrayals of Mexican-Americans

a. Californianos/as: The Mexicans of California
The conflation of Mexican-American nationality and race was constructed in mid-nineteenth century America. n160 In the early 1800s, people in the United States ascribed to Mexicans their nationality and, separate from that, races. For example, a Mexican national was considered Mexican and might also be white, Indian, Black, or Asian. n161 By the 1830s and 1840s, the conflation of Mexican's nationality and race began to appear in North American literature. While this historical literature purports to present accurate descriptions of the Mexican experience in the United States, it actually constructs stereotypical images by conflating the Mexican race and nationality. n162 Moreover, this literature has long influenced perceptions and interpretations of Mexican-Americans.

Some of the best literary examples of the conflation are of Mexicans living in California n163 during the mid-nineteenth century. The conflationary images of "Californianos" n164 were fixed by the accounts written by Anglo-American travelers and adventurers between 1820 and 1847. In Thomas Jefferson Farnham's Travels in California and Scenes in the Pacific Ocean, he describes the Mexicans as "an imbecile, pusillanimous race of men, and unfit to control the destinies of that beautiful country." n165

"This theme of Anglo-Americans as the superior "race" and Mexicans as the inferior "race" is fully detailed in one of Farnham's earlier works entitled Life, Adventures, and Travel in California:

No one acquainted with the indolent, mixed race of California, will ever believe that they will populate, much less, for any length of time, govern the country. The law of Nature which curses the mulatto here with a constitution less robust than that of either race from which he sprang, lays a similar penalty upon the mingling of the Indian and white races in California and Mexico. They must fade away; while the mixing of different branches of the Caucasian family in the States will continue to produce a race of men, who will enlarge from period to period the field of their industry and civil domination, until not only the Northern States of Mexico, but the Californians also, will open their glebe to the pressure of its unconquered arm. The old Saxon blood must stride the continent, must command all its northern shores, must here press the grape and the olive, here eat the orange and the fig, and in their own unaided might, erect the altar of civil and religious freedom on the lands of the Californias. n166

Farnham's racist images demonstrate two important points about the conflation. First, that the transformation of "Mexican" from a nationality to a race is buttressed by the justifications of the Monroe Doctrine and Manifest Destiny, the prevailing expansionist policies and ideologies of nineteenth century America. These policies and ideologies served to forge an image of Anglo-Americans as superior beings, "custodians of democracy," n167 destined to spread its principles. At the same time, these policies and ideologies served to perpetuate homogenizing popular perceptions of Mexicans, and other Latin American origin groups as "foreign Others," excluded from the nation's self-identity. n168 As Ian Haney Lopez argues, "Farnham's racialization of Mexicans did not occur in a vacuum. n114 but in the context of a dominant ideology, perceived economic interests, and psychological necessity." n169

The ideology of the nation's manifest destiny, which in effect declares the superiority of Anglo-Americans, is exemplified by Farnham's assurance to his readers that "the indolent, mixed race" of California will never populate nor govern California. Moreover, by accentuating the mixed racial nature of the Mexicans by referring to them as "mulatto," a breed of people which have been "cursed" by Nature for mixing races, Farnham demonstrates the inferiority of the Mexicans. He adds that their mixed race, and thus inferior status, will not stand in the way of the "old Saxon blood" which will "erect the altar of civil and religious freedom on the lands of the Californias." n170

Implicit and explicit in Farnham's narrative is justification of the conquering of the Mexicans and the annexation of California. The racialization of the Mexicans in Farnham's narrative n171 is important in creating an image of an inferior "race" which does not have the "constitution" to govern their own land.

The second important point about the conflation demonstrated by Farnham's narrative is that races are socially constructed, n172 and n115 as such, "ideas about race form part of a whole social fabric into which other relations, among them gender and class, are also woven." n173 As Ian Haney Lopez argues, "Farnham's choice of martial and masculine imagery is not an accident but a reflection of close symbiosis in the construction of racial and gender hierarchies during the nineteenth century." n174 Farnham, unlike other writers of his time, uses the same strong racial harshness to describe Mexican women, of whom he states, "the ladies, dear creatures, I wish they were whiter, and that their cheekbones did not in their great condescension assimilate their manners and customs so remarkably to their Indian neighbors." n175

In 1840, Richard Henry Dana in Two Years Before the Mast, presented the first major image of Mexican
women in California. n176 Dana, a Bostonian, sailed to California on a ship engaged in the hide and tallow trade. In this work, he recorded his impressions of Mexican women. According to Dana:

The fondness for dress among the women is excessive, and is sometimes their ruin. A present of a fine mantel, or a necklace or pair of earrings gains the favor of a greater part. Nothing is more common than to see a women living in a house of only two rooms, with the ground for a floor, dressed in spangled satin shoes, silk gown, high comb, gilt if not gold, earrings and necklace. If their husbands do not dress them well enough, they will soon receive presents from others. n177

Therefore, Dana points out, "the women have little virtue," and "their morality is, of course, none of the best." n178 To Dana, Mexican women are without virtue and morals, purely sexual creatures. This view of Mexican women as women of easy virtue and latent infidelity led to the stereotype of the Mexican prostitute in the literature of the gold rush.

The conflation of race and nationality became more pronounced with respect to Mexican-Americans in nineteenth century America. The supplementation of Mexican national identification with a racial categorization demonstrated by the early literary portrayals of Mexicans or Californianos in California, continued to occur with respect to Mexican-Americans - who had received their United States citizenship under the Treaty of Guadalupe Hidalgo. One of the best examples of the dissemination of Mexican racial images is the characterization of all Latin American origin people as "cholos" [*116] (pejorative term for low-caste or "half-breed" Mexicans) during the Gold Rush of 1849. n179

The Gold Rush of 1849 brought many Anglo-Americans, Mexicans and South Americans to California. Mexican-American elites attempted to ally themselves with Anglo-Americans, while at the same time distancing themselves from the newly-arrived "cholo" masses. n180 Anglo-Americans failed to note the distinction between the Mexican-American elites and the "cholos," in their eyes all Latin American origin people were "cholos." As Leonard Pitt observed, [to the Anglo-Americans], "whether from California, Chile, Peru, or Mexico, whether residents of 20 years' standing or immigrants of one week, all Spanish-speakers were lumped together as "interlopers' and "greasers." n181

Similar sentiments existed in the California legislature. The homogenization of the social and racial differences among Latin American populations and the racialization of such populations is exemplified by G. B. Tingley of Sacramento, who described Mexicans and Latin Americans in the following terms:

Devoid of intelligence sufficient to appreciate the true principles of a free form of government; vicious, indolent, and dishonest, to an extent rendering them obnoxious to our citizens; with habits of life low and degraded; an intellect but one degree above the beast in the field, and not susceptible of elevation; all these things combined render such classes of human beings a curse to any enlightened community. n182

The homogenization of Latin American populations in nineteenth century America under the fused categories of race and nationality is also exemplified by the term "greasers." "Greaser" was a term commonly used in a racial way to describe the former Mexican citizens living in recently acquired territories. Americans began [*117] to call Mexicans "Yellow-bellied greasers" and to develop the notion that Mexicans by race were naturally cowards. n183 Initially, the term "greaser" was used exclusively to describe Mexicans in Texas, New Mexico, Arizona, and early California. n184 However, after the arrival of other Latin Americans, especially in the gold fields of California after the Gold Rush of 1849, the term "greaser" was applied to all persons of Latin American origin. Although there were four distinct Latino groups in California in 1850 - the Californios (originally born in Mexican territory, but by then citizens of the United States under the Treaty of Guadalupe Hidalgo), Mexicans, Peruvians, and Chileans - the mining society tended to view them all as one race, generally lumping them all together under the term "greaser." For policy purposes, they were treated as one group. In 1856, the California Assembly refused to fund the translation of laws into Spanish and further passed an anti-vagrancy act which was commonly referred to as the "Greaser Act" n185 because it specified, "all persons who are commonly known as 'Greasers' or the issue of Spanish or Indian blood." n186

b.

"Good Women," "Bad Women": The Californianas

The images of stereotypical Mexican-American women - the Californianas - in nineteenth century America presented the polar portrayals of the "bad" and "good" women. Both of these images conflated the race and nationality of Californianas, although in different ways. n187 The "bad women" stereotype depicted the Californianas as inferior beings because of their dark skin and Indian features. By contrast, the
"good women" stereotype elevated elite Californianas to a higher sphere due to their European ancestry and elite class status, thus legitimizing the intermarriages between Californianas and Anglo-Americans. Both stereotypes mold the conflation in the sexual definitions of women's virtue and morality of nineteenth century America. Thus, "bad" Californianas are racially inferior and lack virtue, while "good" Californianas are of European ancestry and universally chaste.

Generally, the images or stereotypes of Californianas in nineteenth century America revolved around the issue of women's virtue and morality. These stereotypes were both sexually and racially defined. n188

The dimension of class was an important issue with respect to the Californianas. Elite Californianas were depicted as virtuous, beautiful, industrious and white. Alfred Robinson, in his book, Life in California, contends that "the female portion of the community, it is worthy of remark, do not seem to have felt its influence, and perhaps there are few places in the world where in proportion to the number of inhabitants, can be found more chastity, industrious habits, and correct deportment, than among the women of this place." n189 As Antonia Castaño argues, "Robinson defended the morals, virtue and racial purity of elite Californianas." n190

The images of the Californianas of nineteenth century America add the dimension of sex to the conflation. While Dana and Farnham construct images of Californianas as women of easy virtue, no morals, and racial inferiority, Robinson portrays the elite Californianas as different than the rest. The elite Californiana, according to Robinson, is outside the mold of the others because she is "saved" by her elite status. As Antonia Castaño argues, "her European ancestry and aristocratic background, to say nothing of her economic value, made her worthy of marriage." n191

Recently, Chicano historians and scholars have studied these dichotomous images of the Californianas in nineteenth century works written by Anglo-American writers. n192 These new examinations have stimulated and provoked quite a conversation. David Langum, who recognizes the existence of the dual images, argues that the negative image was the minority view. n193 He further argues that this image was class-based. The image was not only derived by upper class Anglo-Americans like Dana, but more importantly, the subjects of the image were lower-class Californianas. Langum attributes the contradictory images of Californianas to the class prejudice of the writers and the class origin of the subjects, while assuming that the stereotypes were accurate for lower-class women. n194 Against this view, Janet Le Compte cites the Anglo-American norms for proper female behavior as the real basis for the negative views of Californianas. n195 Le Compte argues that these norms were conditioned by the more restrictive position of women in North American society and culture. n196 Finally, Antonia Castaño argues that both Langum and Le Compte failed to recognize that the changing image of Californianas "derived from America's unfolding system of beliefs and ideas about sex and race, as well as about economic and political expansion." n197

The dichotomous stereotypes of Californianas emerged due to the prescribed ideas and definitions of women's role "derived from the ethos of the bourgeois class whose hegemony extended to the definition and production of culture." n198 The American woman became the symbol of the country's innocence, morality and virtue. However, for Californianas, the added dimension of race was also integral to the judgment of their virtue and morality. Thus, Anglo-American writers, with their racial bias against Californianas, created a stereotype of them as both racially and morally inferior - the "bad women" of easy virtue and no morality. According to Castaño, "stereotypes of Mexican women's morality not only encompassed both the sexual and racial dimensions, but were also the basis for moral judgments about Mexican people as a whole." n199

On the other hand, the positive image of Californianas emerged from the numerous intermarriages between elite Californianas and Anglo-American males. n200 The positive images written by Anglo-American husbands of elite Californianas were as pejorative in nature as the negative images. For the most part, the elite Californias anas were of mixed-blood or mestizo origin and they were not aristocratic by birth. n201 As Castaño contends:

In Europeanizing California mestizas and mulatas and proclaiming them industrious, moral and chaste, the corrective image justified and rationalized the union of a racially, morally superior Anglo man to a woman of an inferior racial and moral stock. Robinson's Europeanization of Californianas fulfilled Thomas Jefferson Farnham's racist wish that "the ladies, dear creatures," be made whiter. Finally, the new image transformed elite Californianas into the epitome of the ideal woman enshrined in the cult of True Womanhood. Once the conquest was at hand, the portrayal of Californianas shifted from a negative to a positive image and severed her from her racial, cultural and historical reality. n202
2. "Boricuas" and Natives: Images of Puerto Ricans

As in the case of Mexican-Americans, nineteenth century pejorative portrayals of Puerto Ricans illustrate the conflationary process at work. Again, these early images, which later hardened into stereotypes, were embedded in the Anglo-American notion of manifest destiny and supremacy. The annexation of Puerto Rico, and the incorporation of Puerto Rican territory to the United States were bound up in a process by which a national identification was supplanted by a racial one. Thus, not unlike Mexican-Americans, the early negative images of Puerto Ricans were focused on their racial characteristics and alleged debased condition.

The first conflationary images of Puerto Ricans were brought back to the mainland by the United States military, which occupied the island during the Spanish-American War. Although the military was enthusiastic about the island from a military perspective, their descriptions of the Puerto Rican people as "lazy" and "dirty" natives were disturbing. As Suzanne Oboler contends:

some Americans found a population that, particularly among the working class and the poor, seemed "patient" and "docile," their very gentleness permitting "the unjust scale of wages they receive to become the custom." Others, however, saw "the natives" as "lazy and dirty, but... very sharp and cunning," and found that "the introduction of American ideas disturbs them little, they being indifferent to the advantages offered."

A white U.S. officer noted that "the people seem willing to work, even at starvation wages, and they seem to be docile and grateful for anything done for them. They are emotional...."  

Images of lazy, submissive Puerto Ricans persisted, particularly after the passage of the Foraker Act of 1900 (the "Act"). The Act, largely aimed at exacting tariffs on Puerto Rico's agricultural products, also denied, for the first time in United States history, both territorial status and constitutional protection and citizenship to the newly acquired territory. At least some of the Congressmen were concerned about the "race" of Puerto Ricans. One Congressman remarked:

I am opposed to increasing the opportunities for the millions of negroes in Puerto Rico and the 10,000,000 Asiatics in the Philippines of becoming American citizens and swarming into this country and coming in competition with our farmers and mechanics and laborers. We are trying to keep out the Chinese with one hand, and now you are proposing to make Territories of the United States out of Puerto Rico and the Philippine Islands, and thereby open wide the door by which these negroes and Asiatics can pour like the locusts of Egypt into this country.  

The Congressman's remarks illustrate two important points about the nature of the conflation with respect to Puerto Ricans. First, the racialization of the Puerto Ricans, like that of the Mexicans, did not occur in a vacuum, but in the context of a dominant Anglo-American ideology which embraced the notion of racial, moral, economic and political superiority of Anglo-Americans. In this Congressman's opinion, these "negroes" do not deserve to become American citizens, but he does not object to the annexation of Puerto Rico. By focusing only on the "negroes" and thus homogenizing all Puerto Ricans under the "negro" label, the congressman effectively racialized the whole Puerto Rican population. This racialization ignores the fact that, by the end of the century, the island's population was comprised of thirty-four nationalities.

Second, the imposition of discrete mainland categories of black and white on Puerto Ricans, whose home culture saw, and still sees, racial diversity on a continuum, sets the conflation in a "black/white" Pdigm that would set the framework for Latinos in the twentieth century. The white/black Pdigm was the original model of racism in the United States.

These racial overtones continued even when Puerto Ricans were granted full citizenship in 1917 by the Jones Act. The Jones Act created a citizen that was not afforded all of the citizenship rights held by other United States citizens. For example, Puerto Ricans living in Puerto Rico were not allowed to vote in American elections, although adult males were subject to obligatory military service.

B. The Conflation in the Twentieth Century: Formal Confusion of Race and Nationality

In the twentieth century the state has legitimized the conflation, thus creating, despite the heterogeneity of the population involved, a "race" that presumably can be described on the basis of real and identifiable traits. The umbrella definitions of "Hispanic" or "Spanish Origin" have the objective effect of minoritizing the world. These "broad" classifications ignore social-class and national-origin differences among people, thus blurring the differences between United States
"minority groups" and immigrants. In the socially constructed realities created by these classifications, Latin American origin populations are a minority group. n213

1. Examples of Conflation in the Early Twentieth Century

The formal and institutionalized nature of the conflation of race and nationality is illustrated by three events in the early part of the twentieth century. The three examples of the transition of conflationary images from literary works or speeches, to more institutionalized or formal spheres all involve Mexicans. At the turn of the century, the Mexican population was the largest of the Latin American groups, while in 1850, two years after the execution of the Treaty of Guadalupe-Hidalgo, there were perhaps 80,000 Mexican Americans. n214 Mexican immigration from 1900 to 1930 was a major contributor to the Mexican American population. n215 The flows of Puerto Ricans and Cubans occurred towards the middle of the twentieth century.

a. Los Angeles County Health Department Statistics

In the early part of the twentieth century the Los Angeles County Health Department began to compile statistics for Latinos of Mexican origin. n216 At the time, there was a national debate over immigration and national origin quotas, and thus the statistics were the Department's way of gathering evidence in light of this debate. By 1916, death and infant mortality statistics were reported for "White" and "Mexican" people. Thus, the racial category "White" was compared to the national origin category "Mexican." In a similar manner, statistics for nursing services were presented for "White, Mexican and Other (Negro or Oriental)." n217

[*125] The Los Angeles County Health Department statistics are the earliest examples of the conflation becoming institutionalized. The fusion of race with nationality reflected in the terminology and methodology used by Los Angeles County, not only racializes the entire population of Latinos of Mexican origin, but it also fails to contextualize the specific histories and cultures that differentiate Mexican-Americans from Mexican immigrants. In so doing, the Mexican-Americans are combined with the turn-of-the-century immigrants from Mexico. The racialized term, "Mexican," homogenizes class experiences and neglects many different linguistic, racial, and ethnic groups within the Mexican nationality. n218

b. California's "Mexican Fact Finding Committee"

In 1929, Governor Young of California appointed the "Mexican Fact Finding Committee" to gather data about Latinos of Mexican origin for policy purposes. In its final report, the Committee noted that Mexicans were racially distinct from "Whites" in that "the bulk of immigration from Mexico into the United States is from the pure Indian or the Meztizo stocks of the Mexican population." n219 The report illustrates two important points about the nature of the conflation. First, the transformation of "Mexican" from a nationality to a race is being incorporated in reports to the Governor of California to be used for policy decisions. The racialized images of Mexicans have transcended the literary arena or popular discourse, into official government documents. Second, because races are constructed, the Mexican "race" begins to be constructed as one consisting of mixed-blood or indigenous populations.

2. The National Census

The confusion of race for nationality was formalized by the United States Bureau of the Census. n220 The deliberate mixing by the Census Bureau of the concepts of race, nationality, and country of origin, placed the confusion on a national scale. While the earliest standardized censuses, from 1820 to 1860, included three racial categories, White, Negro (Free or Slave), and Other, there was a continuous need to track the influence of migration. n221 To that end, in 1860, Indian and Chinese were added, and Japanese was added in 1870. The growth of the Mexican population after 1910 led to a new category being added to the race/color question in the 1930 census. n222 The coding instructions for the race/color entry stipulated that "all persons born in Mexico, or having parents born in Mexico, who are definitely not White, Negro, Indian, Chinese or Japanese, should be returned as Mexican." n223 This entry in the 1930 census was the first time that a nationality was formally recognized as a race.


The Censuses of 1940, 1950, 1960 and 1970 illustrate a change in the conflation; first Mexicans, then other Latin American origin populations, ceased to be a separate race, and were declared to be "White." The conflation of Mexican nationality and the "White" category started with the 1940 census. The coding instructions in 1940 stipulated that "Mexicans were to be listed as White, unless they were definitely Indian or some other race other than White." n224 The census of 1950 reported that there were three major...
races: White, Negro and Other. The coding instructions in 1950 stated that "persons of Mexican birth or ancestry who are not definitely Indian or other non-white race, were classified as white." n225

The coding instructions in both the 1940 and 1950 censuses, instructing the persons to choose White unless they were "definitely Indian or some other race other than White" transformed the conflationary images of Mexicans from one race to another. The significance of this change is two-fold. First, the conflation is still of nationality for race, although instead of "another" race, it is with the white race. Thus, the change of the conflation illustrated in these two censuses demonstrates a conflation in transition, constructed by the ideas about race. Second, the new conflation effectively obliterates the "Indians" of the Mexican populations. As Jack Forbes argues, "with any mixture of bloods the "Indian" is sup [\*127] posed to disappear, that is, to be "blanched' out, becoming white." n226

The increase in the 1950s of the Puerto Rican population living in the mainland mandated more information about Puerto Ricans. n227 Thus, the 1960 census stated that "Puerto Ricans, Mexicans or other persons of Latin descent would be classified as "White" unless they were definitely Negro, Indian, or some other race." In addition, the Spanish surname criterion was used to approximate the Mexican origin population in the five southwestern states. n228 In New York State [\*128] only, a question was asked about birthplace with three possible answers: United States, Puerto Rico, Elsewhere.

As a result of the political pressure by Latino groups in the 1960s, n229 the 1970 census adopted the category "Spanish heritage population." n230

In 1969, the Bureau of the Census began attempting to create a new, fictitious group of people called "Spanish," "Spanish Origin," "Spanish Heritage," or other forms of the specific national designation "Spanish." It should be stressed that "Spanish" refers directly to Spain as a country and to a European, white nationality. Contrary to popular usage, "Spanish" does not refer to a specified language, since Castillian, Gallego, Catalan and Basque are all equally "Spanish" languages. In choosing to create a "Spanish Origin" group, the Census Bureau consciously conceived of this population as overwhelmingly "White" and "Indo-European." The Spanish Heritage population was defined as (i) Spanish surname or Spanish language in the five southwestern states; (ii) Puerto Rican birth or parentage in the three middle Atlantic states; and (iii) Spanish language in the remaining 42 states. n231

b. The 1980 Census

For both political and statistical reasons, n232 efforts to improve the coverage of the Latin American origin population led to the use [\*129] of several items designating Latin American national origin or ancestry in the 1980 Census of Population and Housing (the 1980 Census). The 1980 Census included an item on the 100 percent enumeration schedule which required all households to indicate whether their members were of Spanish/Hispanic origin or descent. n233 Those responding affirmatively were asked to indicate whether their origin was Mexican, Puerto Rican, Cuban, or other Spanish/Hispanic Origin. n234 The accompanying instructions for this question read as follows:

A person is of Spanish/Hispanic origin or descent if the person identifies his or her ancestry with one of the listed groups, that is, Mexican, Puerto Rican, etc. Origin or descent (ancestry) may be viewed as the nationality group, the lineage, or country in which the person or person's parents or ancestors were born. n235

Although the "Spanish/Hispanic" choice in the 1980 Census was intended as a mixture of a culturally derived term that was partially operationalized by nationality and partially by culture, the result was the expansion of the conflation. First, the instructions for the "origin or descent" question failed to provide a workable definition for the "Spanish/Hispanic" choice. The instructions fail to differentiate between the Spanish/Hispanic as a national origin or a race.

According to demographers analyzing the 1980 Census responses, forty percent of those classified as "Hispanics" using secondary identifiers n236 gave a negative answer to the Spanish/Hispanic origin Census question. Instead, they wrote their country of origin in the space left for "Other" in the question designed to establish race. n237 Those in the Latin American origin population which exhibited the greatest "consistency," self-identifying as "Spanish/Hispanic" in addition to secondary "Hispanic" identifiers, were [\*130] primarily of Mexican and Puerto Rican origins. n238 In addition, this group had considerably lower socioeconomic status (in terms of income, occupation, and education) than the "inconsistent" forty percent mentioned above. "Inconsistent" respondents were primarily Central and South Americans; a small percentage were Puerto Ricans and Cubans. n239

The 1980 Census analysis illustrates the institutionalized conflation of Latino's race and nationality. The question intended to elicit the "race" of the respondent is poorly constructed; it cues people
for racial categories and national origin. According to F.M. Treviño, the analysis demonstrated that the "inconsistent" respondents "perceive Hispanic ethnicity to constitute a race." Against this view, Tienda and Ortiz argue that:

These individuals were likely to be Hispanics with ambivalent ethnic identities who misreported their origin either because they objected to the lack of response choices on the full-enumeration item (e.g., as Venezuelan, Argentine, etc. choices), or who deliberately denied their Hispanic origins... Inconsistent "Hispanic" [sic] respondents... appear to exhibit ambiguity about their "Hispanicity" [sic].

The issue of ambiguity about a person's "Hispanicity" is patronizing, and it ignores the social construction of the "Hispanic" label. As Martha Gimenez argues:

That many respondents chose to write their national origin where they did, while declining to accept a "Spanish/Hispanic origin," reveals, in all likelihood, neither error, ignorance, or an effort to hide an embarrassing "ethnic" identity, but rejection of the coercive nature of the self-identification question. The question forces respondents to agree to having "Spanish/Hispanic origin," something which for a substantial number of people makes no sense, both in terms of their actual ancestry and/or in terms of their historical sense of who they are and/or (in the case of Latin Americans) their nationalist allegiance to their country of origin. The status inconsistency perspective is a subtle exercise in "majority" power. It "scientifically" neutralizes the assertion of an alternative identity (or the scholarly critique of the label, as the case may be), ignoring its historical structural determinants and reducing it to the effect of psychological states; i.e., suppression of, or ambivalence about, "real" "ethnic identity," an identity that exists mainly in the eyes of the "majority" beholder. As Martha Gimenez argues:

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In suggesting that minority-majority districts bring together those "who may have little in common with one another but the color of their skin," the majority is constructing a biological definition of race. She defines race as skin color in order to establish that we should not recognize race since it means nothing more than skin color.

In legal discourse, the notion that race is constructed in social contexts and has had a multitude of meanings is virtually nonexistent. The idea that race is fixed and inherited remains widely accepted and reflected in the law. The Supreme Court adopted this conception of law in Shaw v. Reno.

In a controversial ruling holding that a majority black congressional district may violate the constitutional rights of white voters, the Supreme Court constructed a biological conception of race. In Shaw v. Reno, five white voters challenged a state-enacted reapportionment plan as an impermissible racial gerrymander. The Court held that the plaintiffs could make a cognizable claim under the Equal Protection Clause of the Fourteenth Amendment "by alleging that the legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race." In a sharply divided opinion, Justice O'Connor, writing for the majority, rejected the district court's conclusion that the white voters did not state a claim under the Equal Protection Clause. Justice O'Connor points out that "reapportionment is one area in which appearances do matter," and a "reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." The Court held that the plaintiffs could make a cognizable claim under the Equal Protection Clause. Justice O'Connor then established that the level of review on remand was to be strict scrutiny, and the lower court was instructed to determine "whether the North Carolina plan [was] narrowly tailored to further a compelling governmental interest." In suggesting that minority-majority districts bring together those "who may have little in common with one another but the color of their skin," the majority is constructing a biological definition of race.

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Classifications of citizens solely on the basis of race "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility. ("Even in the pursuit of remedial objectives, an explicit polity of assignment by race may serve to stimulate our society's latent race-consciousness, suggesting the utility and propriety of basing decisions on a factor that ideally bears no relationship to an individual's worth or needs.")

Criticizing the majority, Justice White recognizes different definitions of race. For Justice White, the Court has the power to consider history and social context in determining whether a use of race is constitutional. He cites the Court's holding in White v. Regester that "the historic and present condition of the Mexican-American community, a status of cultural and economic marginality, as well as the legislature's unresponsiveness to the group's interests," justified the conclusion that Mexican-Americans were "effectively removed from the political processes.

2. Nationality/National Origin

The legal equivalent to nationality is "national origin." National origin is a protected characteristic under the Equal Protection Clause of the Fourteenth Amendment, and Title VII of the Civil Rights Act of 1964.

"National Origin" and the Equal Protection Clause

The United States Supreme Court has held that classifications based on national origin are suspect classifications under the Equal Protection Clause. National origin has been defined by the Court as "the nation of one's birth." In Hernandez v. Texas, the Court held that classifications based on national origin violate the Equal Protection Clause. In Hernandez, the evidence showed that fourteen percent of the population of Jackson County, Texas, had Mexican or Latin American surnames. Moreover, eleven percent of males over twenty-one years old had Latino surnames, and six or seven percent of freeholders on the county's tax rolls were persons of Mexican descent. Despite all of this statistical evidence, there was no record that any person with a Latino surname had ever been selected to serve on a jury commission or grand jury in Jackson County within the last twenty-five years.

The Court in Hernandez found that these statistics established a case of discrimination against persons of Mexican descent. According to the Court, "the exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment." The Court realized that although race and color were traditional identifiers of groups that did not enjoy equal treatment, "community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection.

"National Origin" and Title VII

National origin is also protected by Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination because of race or color, national origin, religion, and sex. As Juan Perea argues "national origin' discrimination remains, as it began, largely undeveloped and ineffective." Courts have been reluctant to expand the meaning of "national origin" under Title VII to include ethnicity. As Juan Perea contends, Mexican American employees must endure insults such as "wetback' and demeaning labor which "Americans... [do] not have to do." Persons who speak with "foreign" accents may be denied employment, even when they have the requisite job qualifications, because of the discomfort they may cause the employers.

The only Supreme Court decision interpreting "national origin" under Title VII, Espinoza v. Farah Manufacturing Co. formulated a narrow interpretation of the term "national origin." Espinoza established that an employer may hire only United States citizens and not run afoul of Title VII's ban on national origin discrimination. In Espinoza, a New Mexico clothing manufacturer maintained a policy of hiring only United States citizens. Plaintiff, a Mexican national living in the United States, claimed that this practice constituted national origin discrimination against Mexicans. The Court disagreed, holding that alienage discrimination does not violate Title VII under either disparate treatment or disparate impact theories.
Justice Marshall's opinion in Espinoza examined the legislative history of the term "national origin" and construed it to mean "the country where a person was born, or, more broadly from which his or her ancestors came." Thus, the terms "national origin" and "ancestry" were considered synonymous.

Although courts easily have embraced ancestry within the meaning of national origin, they generally have been more reluctant in interpreting Title VII to provide protection against discrimination because of other ethnic traits. As Juan Perea contends "what is usually labelled "national origin' discrimination is actually discrimination because of a person's ethnic traits." Thus, with respect to expressions of ethnicity, courts interpret Title VII in a manner that, "rather than encouraging equality and tolerance of difference, instead encourages uniformity and rejection of ethnic differences." n282

B. The Conflation, the Equal Protection Clause and "National Origin": Language as a Surrogate for Race

The Supreme Court's decision in Hernandez v. New York demonstrates the legacy of the historical and societal conflation operating within contemporary jurisprudence. The conflationary practices of the Supreme Court deconstructed below disclose specific insights into how the conflation operates in law.

In Hernandez, the Court concluded that there was no equal protection violation when a prosecutor used peremptory challenges to exclude two bilingual Latino jurors from a jury that was expected to consider Spanish-language testimony. Yet, the discrimination in Hernandez is based on bilingualism, an ethnic characteristic shared by approximately two-thirds of Latinos.

As discussed below, the plurality and concurring opinions in Hernandez demonstrate how the Supreme Court utilizes the conflationary concepts to (i) limit the protection of the Equal Protection Clause to the Court's construction of "race", which fails to appropriately include ethnicity; (ii) construct its definition of "race" within the historical black/white paradigm, which readily excludes Latinos; and (iii) ignore the intersection of ethnicity and race, which is a large part of most Latinos' reality. As Frank Valdes argues, "the legal system simply cannot fulfill the nation's existing, formal anti-discrimination mandate" until the conflationary practices are exposed.

[*138]
1. Hernandez v. Texas

The conflation of race and ethnicity in Hernandez is illustrated in Justice Kennedy's (con)fusion of the two concepts. Justice Kennedy writes that the Court must determine whether the prosecutor offered a "race-neutral" reason for excluding the two Latino jurors. Since the Court is considering potential discrimination based on bilingualism, an ethnic rather than a racial characteristic, it should be determining whether the prosecutor was "ethnicity-neutral," not "race-neutral." As Juan Perea argues, "this distinction is more than a semantic difference because many reasons that can be deemed "race-neutral" - meaning "not race' - such as bilingualism, accent, or Latino surname, may not be "ethnicity-neutral."

Justice Kennedy allowed the possibility that this ethnic trait, bilingualism, may be treated as "a surrogate for race" and thus, a violation of the Equal Protection Clause under certain circumstances. Justice Kennedy wrote:

Our decision today does not imply that exclusion of bilinguals from jury service is wise, or even constitutional in all cases. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis. And, as we make clear, a policy of striking all who speak a given language, without regard to the particular circumstances of the trial or the individual responses of the jurors, may be found by the trial judge to be a pretext for racial discrimination.

The key terms that illustrate the Court's operation of conflationary terms are "surrogate for race" and "pretext for racial discrimination." First, the majority opines, that the "proficiency in a particular language" in connection with "certain ethnic groups" should be treated as a "surrogate for race" under an equal protection analysis. Thus, the Court is constructing its definition of "race" to include, with respect to certain ethnic communities, bilingualism. Bilingualism is not recognized on its own merit, it is embodied in the Court's definition of race, leaving exposed, without protection, other ethnic traits that may elicit discrimination and thus merit protection under the Equal Protection Clause.

Secondly, using bilingualism or retention of Spanish proficiency as a "surrogate for race" excludes the portion of the Latino population that does not speak Spanish.
Lastly, the plurality opinion acknowledges that a policy which strikes all who speak a certain language may be found to be "a pretext for racial discrimination." n298 Again, an ethnic trait is collapsed into the Court's construction of race. Defining the parameters of the Equal Protection as "racial" ones, and not ethnic ones. As Juan Perea argues, "by creating a 'concept of race' that it can expand or contract at will, the Court dilutes the meaning and proper analysis of race and ethnicity under the Constitution." n299

b. Perpetuating the Construction of Race Through Black/White Paradigm

Both the plurality opinion and the concurring opinion in Hernandez perpetuate the construction of race through the black/white [\*140] paradigm. n300 In the concurring opinion, Justice O'Connor, joined by Justice Scalia, took a very narrow definition of race. Justice O'Connor wrote:

Upon resolution of the factfinding questions, this case is straightforward... In order to demonstrate such a violation, Hernandez must prove that the prosecutor intentionally discriminated against Hispanic jurors on the basis of their race. The trial court found that the prosecutor did not have such intent, and that determination is not clearly erroneous. Hernandez has failed to meet his burden. n301

Justice O'Connor makes it clear that there is no connection between race and ethnicity.

No matter how closely tied or significantly correlated to race the explanation for a peremptory strike may be, the strike does not implicate the Equal Protection Clause unless it is based on race. That is the distinction between disproportionate effect, which is not sufficient to constitute an equal protection violation, and intentional discrimination, which is. n302

The problem with Justice O'Connor's concurring opinion is that it tries to define "race" within the parameters of the black/white paradigm. The connotation is that of race as a physical construct, as supposed to one that is socially constructed. This groundedness on physical traits is historically based on the black/white struggles in both society and law. Unfortunately, Latinos and their ethnic traits do not fit within this binary paradigm. As such, Justice O'Connor's construction of "race" leaves Latinos with little or no protection if the discrimination is created by an ethnic trait, as opposed to a racial one.

c. Marginalized by the Intersection of Ethnicity and Race

The plurality and concurring opinions in Hernandez construct "race" in a way that marginalizes Latinos by ignoring the intersection of ethnicity and race. As Kimberle Crenshaw argues, the marginalization occurs due to the legal failure to comprehend the "intersectionality" of the two constructs; n303 in this case, race and ethnicity. Latinos are constructed by multiple influences - racism, sexism, the dominant culture's binary racial framework and minority language discrimination. n304 This process of intersecting yet marginalizing creates a "slippery-slope" for Latinos under the Equal Protection Clause.

Challenging the unitary characterization of race is not simple. By emphasizing the diversity of the Latino community as a group - ultimately highlighting the heterogeneity and complexity of the Latino population - do we begin to deconstruct the Court's analytical framework? If so, Latinos may not have any protection under the Equal Protection Clause for their "Latinismo."

2. Soberal-Perez v. Heckler

Most courts that have addressed the issue have concluded that, standing alone, language classifications do not warrant strict or heightened scrutiny under the Equal Protection Clause. n305 Generally, these courts have applied the rational basis test and upheld language classifications. n306 A typical example of this type of treatment is the decision of the United States Court of Appeals for the Second Circuit in Soberal-Perez v. Heckler. n307 In Soberal-Perez, a Spanish-speaking plaintiff alleged that the failure of the Secretary of Health and Human Services to provide social security information in Spanish violated the Equal Protection Clause. The court noted that the classification did not discriminate against Hispanics as a group, n308 and thus determined that the classification merely warranted rational basis review. n309 The court reasoned that because English is the "national language" of the United States, the policy bore a rational relation to a legitimate governmental purpose. n310

C. The Conflation, Title VII and "National Origin"

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination because of national origin, religion, sex, race, and color. n311 The prohibition against "national" origin discrimination remains largely undeveloped. Although the courts and the
EEOC have interpreted the statutory definition of "national origin" broadly, the Supreme Court has construed the statutory very narrowly. n312

With respect to Latinos and Title VII, the courts have usually referred to an earlier legislative act for definition of discrimination: 1981 of the Civil Rights Act of 1866. n313 The courts have not been clear on the issue of whether discrimination based on "national origin" alone is not covered under 1981. However, where the same discrimination could be characterized as "racial," several courts have allowed plaintiffs to base their complaints on 1981. n314 In Cu **143** bas v. Rapid Am. Corp., Inc., n315 the court stated that "national origin discrimination is actionable only to the extent that it is motivated by or indistinguishable from racial discrimination." n316 In Enriquez v. Honeywell, Inc., n317 an Oklahoma court noted that "the line between discrimination on account of race and discrimination on account of national origin may be so thin as to be indiscernible." n318 What these two cases illustrate is the "slippery-slope" that the conflation creates in this area. On one hand, national origin discrimination is actionable if it is indistinguishable from racial discrimination; yet on the other, it is hardly "indiscernible." n319 Thus, national origin becomes a slippery construct used as a proxy for race.


In Manzanares v. Safeway Stores, Inc., the court used the conflation to apply a "common perception" approach. n320 In Manzanares, an employee of "Mexican American descent," brought a suit against an employer for injunctive relief and damages alleging unlawful employment practices under 1981. That is, the Court noted:

The measure is group to group, and plaintiff has alleged that the "group" to which he belongs - those he describes as of Mexican American descent - is to be measured against the Anglos as the [*145] standard... In this holding we consider that Mexican American, Spanish American, Spanish surname individuals, and Hispanics are equivalents, and it makes no difference whether these are terms of national origin, alienage, or whatever. It is apparent that a group so described is of such an identifiable nature that the treatment afforded its members may be measured against that afforded the Anglos. n321

Thus, the court is applying a social construction model, and protecting the Hispanic "race" against discrimination under 1981. This construction reinforces the debatable assumption that all Latinos have distinguishable characteristics of one kind or another, and it assumes that dark-skinned Mexicans and white Cubans are equally perceived.

Latinos, which are often victims of language discrimination, are unlikely to receive serious consideration from courts unless they can find a nexus to a suspect or semi-suspect classification.

2. Olagues v. Russoniello

In Olagues v. Russoniello, the United States Court of Appeals for the Ninth Circuit introduced an objective test for determining whether a language classification discriminates on the basis of race or national origin. n323 In Olagues, the U.S. Attorney suspected that recent voter registration drives in the Spanish-American community in California might have misled noncitizens into believing they could vote. n324 Thus, he randomly gathered the names of recently registered foreign-born voters who had requested bilingual ballots and attempted to verify their citizenship status with the Immigration and [*146] Naturalization Service. n325 The plaintiffs subsequently filed a class action on behalf of naturalized citizens who requested voting in Spanish or Chinese. n326 Their complaint alleged that the U.S. Attorney had violated their rights under the Equal Protection Clause. n327

The Ninth Circuit remanded the case for review under strict scrutiny standard. n328 In reaching its conclusion, the Olagues court expressly distinguished "general" classifications that discriminate between English-speaking and non-English speaking individuals, from those "specific" classifications that target particular language groups. n329

The problem with this analysis by the Ninth Circuit is that it suggests that classifications imposing the same requirements on all people - regardless of their language and regardless of the intent of the state decisionmaker - do not establish the sufficient nexus with race or ethnic origin to justify strict scrutiny. Thus, the court fails to take into account the conflationary process of using language as a proxy for racial or ethnic discrimination. Indeed, while language declarations and English-only laws might disproportionately burden non-English speakers, they would be deemed non-discriminatory on a racial or ethnic classification. The court fails to recognize the fact that invidious discrimination exists in the absence of a specific classification.

3. Cardona v. American Express
The mid-1980s saw the rise of race discrimination claims filed by plaintiffs who were technically within the same racial category as the defendants they accused.

In Cardona v. American Express Travel Related Servs. Co., Inc., the court allowed a plaintiff of Colombian ancestry to state a 1981 claim based on the fact that his employer gave more favorable treatment to Cubans and therefore discriminated against him because he was Colombian. The court held that it is the country from which a plaintiff is descended that determines if he can state a claim under 1981.

The plaintiff argued that he and the plaintiff were of the same race - the "Latin race." The court based its holding on the different "ethnic and cultural characteristics of each individual Latin American country.

C. The Conflation, Bilingual Education and Language Rights

Bilingual education programs are designed to teach children of limited-English proficiency (LEP) or non-English proficiency (NEP) the English language. Many Latino children of school-age are classified as being of limited English proficiency and are thus unable to learn in classes in which English is the only language spoken. When placed in a regular English-speaking class without special instruction in English, these children are effectively precluded from receiving a meaningful education. Thus, the Latino community has often endorsed bilingual-bicultural education programs, which not only promote proficiency in English but also foster literacy in the native language and respect for the child's cultural heritage. Twenty years ago, the United States Supreme Court recognized the equal educational opportunity rights of LEP and NEP children in Lau v. Nichols. Although the Supreme Court in Lau did not expressly endorse bilingual education, the decision legitimized and gave impetus to the movement for equal educational opportunity for students who do not speak English. Lau raised the nation's consciousness of the need for bilingual education and encouraged additional federal legislation.

Title VI of the Civil Rights Act of 1964 provides that "no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." In 1970, federal policy makers began to consider the relevance of Title VI to providing special instruction to non-English-proficient (NEP) and limited English-proficient (LEP) students. That year, the Office of Civil Rights (OCR) issued a memorandum indicating that, under Title VI, "where inability to speak and understand the English language excludes national-origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."

The conflation of race and nationality is evident in the OCR's expansion of Title VI's coverage. There is no evidence in Title VI's legislative history that its protections extended to linguistic minority children. Thus, the expansion of a system originally designed to redress the grievances of racial and ethnic minorities to include those of linguistic minorities conflated the effects of race, ethnicity, language, and culture on NEP and LEP students' academic performance.

While the Lau Court had recognized that a violation of Title VI could be established solely on the basis of discriminatory effect, without requiring discriminatory intent, this "effects only" test was severely eroded by the Supreme Court in Regents of the University of California v. Bakke. In Bakke, an affirmative action case, the white plaintiff claimed that he was denied a place in medical school because sixteen spaces were reserved for minority students. The Court held that this amounted to a total denial of education to the plaintiff because he was refused admission to a medical school to which he otherwise might have been accepted had the sixteen special admissions seats not been denied to non-minorities.

Although the Bakke holding did not explicitly overrule Lau, it raised serious concerns regarding its applicability in future Title VI cases. Bakke holds that Title VI and the Equal Protection Clause are co-extensive, meaning the constitutional standard for equal protection must be used for Title VI. In Lau, the Court applied a disparate impact test in deciding the Title VI claim. The disparate impact test determines whether there has been a violation by examining the effect the action has had, regardless of the intentional nature of the action. This standard was changed in Washington v. Davis, two years after the Lau decision. In Washington, the Court held that the intentional discrimination which determines whether a violation has occurred by examining only whether that action was taken with the intent to discriminate, is the only constitutional standard for equal protection.

Bakke demonstrates the harmful results of the conflation. Title VI's protection covered both linguistic...
minority students an affirmative action beneficiaries. With the conflation at work, once the Court imposed an intent requirement under Title VI in affirmative action cases, "the legitimacy of linguistic minority students' claims based solely on the effect of English-only instruction was jeopardized." n347

Since Bakke, plaintiffs have increasingly turned to the Equal Education Opportunities Act n348 as the basis for their legal challenges.

[*150]

V. The Aftermath: The Legacy of the Conflation in Law and Society

A closer look at the conflationary process in law and society reveals that it is an insidious phenomenon that dominates and has dominated the lives of Latinos since the nineteenth century. n349 The fusion and confusion of Latino's race and nationality has served to create an image of Latinos as a homogenized population, thus negating the different class experiences, linguistic, racial and ethnic distinctions within the Latino population. n350 In society, the historical legacy of the conflation is the institutionalization and formalization of the conflation in the twentieth century evidenced by usage of the "Hispanic" label in the United States Census, and by government agencies, social institutions,(3,4),(994,995) social scientists, the media and the public at large. n351 This "label" represents the conflation in its most formal characterization and obscures the varied social and political experiences of Latinos. n352

The conflation's social and doctrinal history demonstrates that it serves to perpetuate the ideals and vision of white America. The racialization of Latinos removes them from the sphere of the imagined American self identity, and into the arena of "foreign Other." n353 As racialized foreign Others, Latinos have been (mis)perceived through the black/white, binary prism of American society. Thus, they have been relegated an inferior minority status. As the operation of the conflation in contemporary jurisprudence demonstrates, the conflation has limited the redress available for Latinos in the areas of equal protection, language rights, employment and bilingual education - thus violating the anti-discrimination mission of the American legal system.

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A. The Conflation in Society: Lessons and Beyond

1. Latinos as the Foreign Other: Exclusion From the Imaginary Nation

As I have previously discussed, the conflationary process originated with the perception of Latinos by Anglo-Americans as foreign Others. n354 Specifically with Mexican-Americans and Puerto Ricans this image continued even after they were granted citizenship. n355 Indeed, as Neil Gotanda maintains, this perception of "foreigners" is a legacy of our racial Pdigm, constructed in Black and White. n356 Gotanda suggests that "Other non-whites" - non-Black racial minorities - became incorporated in American society while the nation was still struggling with the legacy of slavery. In specifically discussing the Chinese experience, Gotanda argues:

Other non-Whites, with the exception of Native Americans, did not enter American life until the mid-nineteenth century, when small but increasing numbers of Mexicans, Chinese, and Japanese became, by annexation and immigration, part of the American nation. Early in the 1850s, while the country grappled with slavery and the inability to reconcile an increasingly divergent North and South, Chinese immigrants began to arrive. Initially, the Chinese were welcomed. Within a short time, however, their presence gave throughout the West to widespread, sustained, violent campaigns to expel them. n357

The Anglo-American (mis)perception of Latinos as a foreign Other, excluded from the constructed image of the American nation, led to the development of stereotypes about the alleged laziness, backwardness, and language deficiencies of the Latino "race." The white slaveholders who went to the Southwest had well-developed racial ideology justifying and rationalizing the subordination of African Americans. It was easy for them to stigmatize racially-mixed, often dark-skinned Mexican-Americans as intellectually and culturally inferior.

This (mis)perception of Latinos as foreign Others continues in contemporary American society. In a 1982 nationwide poll, 34 percent of the respondents felt that Mexican immigrants had been bad for the United States; only 25 percent felt Mexican immigrants had been good for the country. n358 A 1994 Survey by the National conference of Christians and Jews regarding interethmic attitudes found [152] that a majority of whites believed that Latinos lacked "ambition and the drive to succeed." n359 In addition, Latinos have often been portrayed in the media in a large sombrero sleeping on a burro or as a border-town prostitute. n360

Scholars and historians have argued that multiculturalism threatens the ideal that binds America together, thus perpetuating the assimilationist theories
of the past and promoting the characterization of Latinos as the foreign Other. Arthur Schlesinger, Jr. argues that:

The new American nationality was inescapably English in language, ideas and institutions. The pot did not melt everybody, not even all the white immigrants; deeply bred racism put black Americans, yellow Americans, red Americans and brown Americans well outside the pale. Still, the infusion of other stocks, even of nonwhite stocks, and the experience of the New World reconfigured the British legacy and made the U.S., as we all know, a very different country from Britain. In the 20th century, new immigration laws altered the composition of the American people, and a cult of ethnicity erupted both among non-Anglo whites and among nonwhite minorities. This had many healthy consequences. The American culture at last began to give shamefully overdue recognition to the achievements of groups subordinated and spurned during the high noon of Anglo dominance, and it began to acknowledge the great swirling world beyond Europe. Americans acquired a more complex and invigorating sense of their world - and of themselves. But, pressed too far, the cult of ethnicity has unhealthy consequences. It gives rise, for example, to the conception of the U.S. as a nation composed not of individuals making their own choices but of inviolable ethnic and racial groups. It rejects the historic American goals of assimilation and integration. And, in an excess of zeal, well-intentioned people seek to transform our system of education from a means of creating "one people" into a means of promoting, celebrating and perpetuating separate ethnic origins and identities. The balance is shifting from unum to pluribus. n361

Schlesinger cites ethnicity emphasis and race consciousness as diverting attention from real needs and worsening problems, declaring that this multicultural orientation is that of a "cult... [that] exaggerates differences, intensifies resentments and antagonisms, drives ever deeper the awful wedges between race and nationalities. [*153] The end game is self-pity and self-ghettoization." n362 Against this view, Todd Gitlin identifies the intense controversy over "political correctness" as reflecting "the surface of a deeper fault line - a trauma in American cultural identity." n363

It is essential to recognize that America's cultural identity, values, and beliefs are a product of its past and present social relations of domination and power. Multicultural diversity is essential. Many research studies about Latinos fail to recognize the merits of multiculturalism and still utilize the assimilation perspective as a way of gauging the status of Latinos in the United States. n365 In reality, Latinos for the most part have had difficulties incorporating into the dominant culture and its institutions because of the heritage of the colonial situation, which has shaped the receiving conditions of the later immigrants. While others have embraced multiculturalism, the actual development of that diversity in a way that would further social justice and the more equitable distribution of power and resources is still in the midst of great controversy.

2. Latinos in the "White/Black" Racial Paradigm

Another lesson on the conflation in society is the placement of Latinos in the "White/Black" racial paradigm which dictates American society. n366 The racialization of Latinos in the nineteenth century formulated the conceptual framework for (mis)perceptions about Latinos. The social construction of the "Latino race" was inevitable in a society that (mis)perceives non-whites as "others." Historically, the political rhetoric of racial inferiority and multitudes of social myths and images identical to the political message have portrayed Anglo-Americans as superior beings and Latinos as inferior - leaving a legacy that permeates the fabric of American society. For most Anglo-Americans inferiority has racial connotations, and the word "race" distinguishes between black and white, as does the word "minority."

While the notion of the "Latino race" has been institutionalized in some arenas, such as the United States Census, n367 in others, Latinos are an ethnic group. In law, Latinos' ethnicity is most frequently considered by the Supreme Court under its concept of "national origin." But as Juan Perea notes, "although the Court has [*154] recently referred to a constitutional prohibition against discrimination because of ethnicity or language, the Court seems to be using the term 'ethnicity' as its unclear conception of 'race.'" n368

The legacies of the Black/White racial paradigm are numerous, but three in particular demand close attention. First, for Anglo-Americans to frame racial issues in strictly Black/White terms is to ignore the "other" physical races that make up the Latino population - white, Asian, and Native American. Specifically, it fails to recognize Native Americans and "meztizos," which are a significant part of the Latino racial make-up. Second, the Black/White paradigm frames the institution of racism in Black/White terms, failing to recognize other types of racism, such as racism of ethnic traits - language, accent, culture, manners, and nationality. This failure of recognition has an even more devastating result: the
isolation of African-Americans from potential allies in the fight against Anglo-American racism.

Third, the said Pdigm "encourages a tendency often found among people of color to spend too much energy understanding our lives in relation to Whiteness, obsessing about what whites will think." n369 This concentration on whites then takes away from Latino self-definition, the construction of realities which best describe and define Latinismo. n370 As Elizabeth Martinez argues:

To criticize the Black-white framework is not simply a resentful demand from other people of color for equal sympathy, equal funding, equal clout, equal patronage. It is not simply us-too resentment at being ignored or minimized. It is not just another round of mindless competition in the victimhood tournament. Too often we make the categories of race, class, gender, sexuality, age, physical condition, etc., contend for the title of "most oppressed." Within "race," various population groups then compete for that top spot. Instead, we need to understand that various forms and histories of oppression exist. We need to recognize that they include differences in extent and intensity. Yet pursuing some hierarchy of competing oppressions leads us down dead-end streets where we will never find the linkage between oppressions or how to overcome them. n371

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3. Formalized Conflation: The "Hispanic Label"

The label n372 "Hispanic" n373 is one of the most devastating legacies of the conflation. n374 The label emphasizes the Spanish heritage of Latino subpopulations while ignoring the other (e.g., Native American and African) components. Suzanne Oboler notes that "precisely because labels presuppose the sacrificing of accuracy, the meanings attributed to them over time are inherently decontextualized and their usage is ahistorical." n375 This lack of historical contextualization is crucial when "the group has or is assumed to have a presumed negative attribute of some kind - a "social handicap' or a perceived or real cultural, social, or racial difference." n376 Devoid of any historical contextualization and coupled with negative attributes, these labels do more than categorize, they stigmatize.

For Latinos, the Hispanic label embodies the conflationary constructs which have historically, and currently, operated in American society. As such, the label is enshrined in negative images of Latinos - from the "Greaser" n377 images of the nineteenth century to "Young Latino criminal" in television shows, such as Baywatch and Acapulco H.E.A.T. n378 The problem is that this label is more than just a social indicator, it is the official ethnic designator for Latinos.

The Latino response has been to use the term "Latino." This term is derived from "Latin America" and, as such, preserves the flavor of national origin and political relationship between the United States and Latin America. Latino is culturally neutral with respect to Latin American origin groups. n379 Since it is a Spanish [*156] word, it provides a link with the language which unifies the Latino population. As Edward Murguia has pointed out, these collective terms suggest different attitudes toward incorporation into or separation from the dominant Anglo culture. n380 While "Hispanic" suggests assimilation, or aspirations toward assimilation, "Latino suggests cultural pluralism and cultural maintenance, including the continued use of the Spanish language." n381

The problem is that the term "Latino" has not been accepted as the official identifier of Latinos. Indeed, there is a debate among Latino scholars as to whether "Latino" should be the official identifier. Both defenders and critics of the label agree on the need for a standardized term to identify the Latino population. The defenders of the term "Hispanic" generally believe that pragmatically it is essential to keep the label since the statistics compiled by the federal government and government use the Hispanic label, as do social scientists and policy makers. n382 Secondly, on a political level, the defenders of the label maintain that it identifies a minority group subject to severe discrimination. n383 In Fernando M. Treviño's opinion, to replace Hispanic with Latino would undermine affirmative action protection for Hispanics because, academically defined, Latino designates "the peoples, nationalities or countries such as French, Italian, Spanish, etc., whose languages and culture are descended from Latin." n384

Notwithstanding the opinions of the critics cited above, Latinos should mobilize to implement the Latino identifier as the official identifier. One of the vehicles to accomplish this endeavor is through Critical Race Theory. Thus, a discussion of Critical Race Theory, perspectives and new directions will examine how this can be accomplished.

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VI. Critical Race Theory and Latinos: Perspectives and New Directions.

A. Critical Race Theory: An Overview
At the core of Critical Race Theory is the recognition that "race" is a fluctuating, complex host of social meanings that are formed and transformed by social, political and economic forces. Critical Race scholars see the challenge as exposing how white dominant culture, better known as racial hegemony, binds people of color into a world of oppression and subordination. As Anthony E. Cook argues, one of the major goals of Critical Race Theory is "to elucidate the ways in which those in power have socially constructed the very concept of race over time, that is, the extent to which White power has transformed certain differences in color, culture, behavior and outlook into hierarchies of privilege and subordination." n386

[*158] As a form of oppositional scholarship, Critical Race Theory challenges the dominant discourses on race and racism as they relate to law. n387 Critical Race scholars reject objective, immutable foundations for law and argue that social inequities caused by the legal system are the direct results of choices made by the dominant culture. n388 Critical Race Theory's central tenets is the belief that a scholar's "voice" is a distinctive "voice of color." n389 As such, experiences of scholars of color are legitimate and effective bases for analyzing the legal system and racial subordination. n390

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B. Critical Race Theory and Diversity: "Talking Across Our Spaces" n391

Although some Critical Race scholars have recognized the need for diversity in Critical Race Theory, the focus remains for the most part on a White/Black racial Pdigm. n392 While it is understandable why the White/Black Pdigm has been the prism that has most often been utilized by Critical Race scholars, the time has come for diversity to be embraced. n393 Critical Race scholars must expose the similarities of minority perspectives against the forces of white dominant rule. As Robin D. Barnes argues, "distinguishing the consciousness of racial minorities requires acknowledgment of the feelings and intangible modes of perception unique to those who have historically been socially, structurally, and intellectually marginalized in the United States." n394

Critical Race Theory is well-suited for this type of critical engagement, especially with respect to Latinos. As I have previously discussed, the conflation of Latinos' race and nationality has racialized the entire ethnic group. Not unlike African-Americans, the subordination of Latinos was rationalized by a series of racial and social stereotypes and "attitudes," n395 that made their conditions appear natural. n396 The conquest of Mexico and Puerto Rico were largely rationalized through derogatory racial stereotypes which depicted a "race" of people which need to be "saved" by Anglo-Americans. As Kimberle Crenshaw argues with respect to African Americans [*160] Americans, what is often overlooked today "is the extent to which these stereotypes serve a hegemonic function by perpetuating a mythology about both Blacks and Whites even today, reinforcing an illusion of a white community that cuts across ethnic, gender, and class lines." n397 For Latinos, the Hispanic label reinforces the stereotypes of the nineteenth and early twentieth centuries, portraying the illusion of a homogeneous group which in reality never existed. This illusion, spearheaded by the conflation of race and nationality, has allowed the hegemonic rule to marginalize a large number of the Latino population.

The characterization of "Otherness" by the dominant culture is another link which would unify Latinos and African-Americans by embracing diversity in Critical Race Theory. As Crenshaw notes, "the establishment of an "other" creates a bond, burgeoning common identity of all non-stigmatized parties - whose identity and interests are defined in opposition to the other." n398 The subordination of Latinos derived from the conflation of Latinos' race and nationality, and then the characterization of Latinos as "foreign Others." n399 As foreign Others, Latinos have been excluded and subordinated from the American "imagined nation." n400 Hence, historical discrimination and its legacy provide a fertile ground for the expansion of the White/Black racial Pdigm of Critical Race Theory.

C. Latino Voice and Storytelling

Voice is important in Critical Race Theory. n401 According to Mari Matsuda, the distinctive experiences of scholars of color should be acknowledged, valued, and utilized in a country shaped by the legacy of racial hegemony. n402 She proposes that those pursuing remedies for social inequality should reconstruct jurisprudence utilizing the experiences of those at the bottom rung of our socio-economic ladders. n403 Thus, for Critical Race theorists, language is a social instrument. n404

[*161] Latino scholars must recount our perceptions, experiences, and understanding of law in ways which are "Latino." As subordinated and oppressed minorities, we understand the centrality of race, and specifically of constructed race, and we recognize the way that it is maintained and perpetuated in law and society.
Latinos must expose the conflationary process which has plagued us for the last two centuries, and explain how such process is a function of the hegemonic forces of racism. Latino scholars' histories are relevant to jurisprudential inquiry and to new reconstructions of definitions of social equality and justice.

VII. Conclusion

I am two parts/a person
boricua/spic
past and present
alive and oppressed
given a cultural beauty
... and robbed of a cultural identity
- Sandra Maria Esteves  n405

Consider me, if you choose, a comic victim of two cultures.
- Richard Rodriguez  n406

This Article has outlined and critiqued the conflation of Latinos' race and nationality from the nineteenth century to the present. This conflation continues to operate in law and society. The homogenization of the Latino population and the denial of the diversity of national, linguistic, social, historical, cultural, gendered, racial, and political experiences of Latino people merits a closer look. An exposure of the conflationary process that has oppressed and subordinated Latinos is a necessary prerequisite.

FOOTNOTE-1:


n2. I prefer to use the term Latino/a for three reasons. First, I see it as an alternative collective designation, which recognizes the Latin American origin of the Latino subpopulations. The "Latino/a" term, derived from "Latin America," links the Latin American origin groups in the United States to Latin America. As such, it preserves the flavor of national origin and political relationship between the United States and Latin America. In that respect, it is culturally neutral. Moreover, it is racially neutral. Secondly, it is a Spanish-language word and as such it is a unifying term for an otherwise diverse group of people. Thirdly, it embodies cultural pluralism as opposed to assimilation. Although I would prefer to use the term "Latino/a" throughout this Article, for practical purposes I will most often use "Latino" to refer to both sexes. It is my belief, as a Latina whose first language is Spanish, that despite the "o" ending, the term Latino is sex neutral. By rules of Spanish orthography, all collective terms when used on a grouping containing both sexes, utilize the masculine ending.

n3. I use the term "los confundidos," meaning "the confused ones," deliberately because it connotes two distinct meanings. On one level, "los confundidos" stands for the notion that Latinos are perceived to be "confused" by others. That the conflation has confused others as to what Latinos really are - a race or a nationality. On another level, "los confundidos" refers to the fact that as Latinos, we are confused due to the socio-historical legacy of the conflation. In my opinion both terms are accurate, and indeed, the legacy of the conflation.


The need to dismantle stereotypes is well known and can be traced to the dichotomizing of self and other apparent, for example, in essentializing practices of classical anthropology. Recent critiques of traditional anthropology suggest that the study of the other has been as much about the affirmation of the anthropologist's self as about the construction of the native's otherness. If this is true, then one might ask, how are the dichotomies of self versus other problematized when dealing with bicultural and multicultural peoples? Is not the affirmation of self, and the examination of stereotypes of it, also the affirmation of the internalized? [Citations omitted.]
Oboler, supra note 4, at 19.

n6. See infra notes 117-19 and accompanying text.


n8. See infra notes 365-70 and accompanying text.


n10. See Patricia A. Montgomery, U.S. Department of Commerce Bureau of the Census, The Hispanic Population in the United States: March 1993 10 (1994). I cite these statistics reluctantly, because they have also been "manipulated" by the conflationary process. See infra notes 226-45 and accompanying text.


[SEE TABLE IN ORIGINAL]


n14. See infra notes 31-43 and accompanying text.

n15. Id.

n16. Id.

n17. See infra notes 30-82 and accompanying text.

n18. The term "pan-hispanic" was coined by Juan Bruce-Novoa, Imagenes e Identidades: El Puertorriqueño en la Literatura (Asela Rodriguez de la Laguna ed., 1985).

n19. See infra notes 233-245 and accompanying text. The term "Hispanic" has come into general use in the United States to refer to all people whose ancestry is predominantly from one or more Spanish-speaking countries. The term encompasses great racial and class diversity, obscures gender differences, and even includes people whose primary language is not Spanish.

n20. Kimberle Crenshaw has made a similar argument with respect to whites and African-Americans:

Believing both that Blacks are inferior and that the economy impartially rewards the superior over the inferior, whites see that most Blacks are indeed worse off than whites are, which reinforces their sense that the market is operating "fairly and impartially"; those who should logically be on the bottom are on the bottom. This strengthening of whites' belief in the system in turn reinforces their beliefs that Blacks are indeed inferior. After all, equal opportunity is the rule, and the market is an impartial judge; if Blacks are on the bottom, it must reflect their relative inferiority.


n21. A prime example of this phenomenon is Proposition 187, a measure that the California electorate overwhelmingly approved in 1994. If ever implemented, Proposition 187 will deny undocumented immigrants access to public benefits and services for which they currently are eligible. California Ballot Pamphlet: General Election 54 (Nov. 8, 1994). The Proposition 187 media director blamed the undocumented immigrants for California's economic problems:

Proposition 187 is... a logical step toward saving California from economic ruin. Illegal aliens collect welfare payments through post office boxes in San Ysidro,
just a 15-minute walk from Mexico. They receive free medical care and flood schools with non-English-speaking students. By flooding the state with 2 million illegal aliens to date, and increasing that figure each of the following 10 years, Mexicans in California would number 15 million to 20 million by 2004. During those 10 years about 5 million to 8 million Californians would have emigrated to other states. If these trends continued, a Mexico-controlled California could vote to establish Spanish as the sole language of California, 10 million more English-speaking Californias could flee, and there could be a statewide vote to leave the Union and annex California to Mexico.


n22. The Latino population consists of Mexican-Americans, mainland Puerto Ricans, Cuban-Americans, and recent arrivals from other Spanish-speaking countries of Central and South America. However, this Article will concentrate on the three largest Latino populations: Mexican-Americans, mainland Puerto Ricans, and Cuban Americans.

n23. At this point, I use the terms "national origin" and "nationality" interchangeably. Each term may be defined as the nation of one's birth.

n24. Teresa A. Sullivan notes:

The major national groups identified in the U.S. Census reports are Mexicans, Cubans, 'Central and South Americans' (excluding Brazilians), and 'other Spanish' (excluding Portuguese). Puerto Ricans are also identified separately, although since 1907 they have been U.S. citizens. It is believed that most Hispanics who identify themselves by Spanish origin report themselves as "other Spanish."


n25. Montgomery, supra note 10, at 10-11. The Latino population is the fastest-growing minority population in the United States. Teresa A. Sullivan maintains that any conclusions about Hispanics must be drawn from comparisons within Hispanic groups and from comparisons from Hispanic groups, due to the unreliability of past data regarding Hispanics from the United States Census Bureau. Nevertheless she argues:

The Hispanic population increased from 4.5 percent of the U.S. population in 1970 to 6.4 percent in 1980. By 1980, Mexican-origin persons accounted for about 60 percent of the Hispanic population. Between 1977 and 1980, the estimated proportion of Hispanics of Mexican origin fluctuated between 58.1 and 60.6 percent. Puerto Rican origin accounted for 13.8 percent of Hispanics in 1980. There have been small declines in the estimated proportion of Puerto Ricans for every year since 1977, when the estimated proportion was 15.5 percent. The proportion of Cuban origin has fluctuated between 5.7 and 6.6 percent, with 6.3 percent estimated in 1980. Central or South American origin accounted for 7.7 percent of the Hispanic population in 1980, the same percentage as in 1977. "Other Spanish origin" has fluctuated between 11.4 and 12.7 percent since 1977; the 1980 estimate was 12.3 percent.

Sullivan, supra note 24, at 19.

n26. Some scholars have noted the intra-Latino racial differences:

The term [Hispanic] fails to recognize the extremely rich ethnic and racial diversity of Latin Americans, for example, Argentines of Italian, German or French descent; Mexicans of Irish or Japanese ancestry; Cubans with Spanish, Lebanese, African or Chinese forebears; Peruvians of English, Russian-Jewish or Inca lineage; Venezuelans of Polish or Uruguayan stock; Brazilians of Korean or Greek heritage - the varieties go on and on. And, of course,
there are those many Latin Americans who are entirely or partly of African and American Indian ancestry with some of the above thrown in.


n27. See infra notes 221-226 and accompanying text.

n28. See infra notes 234-235 and accompanying text.

n29. Suzanne Oboler points out the importance of incorporation - especially in understanding each of the Latino subpopulations. She argues:

This diversity in itself raises the issue of the role of the national cultures, the racial and class differences, the customs and language of first-generation Latin American immigrants for understanding their relationship both to "being Hispanic" and to Chicanos and Puerto Ricans who are historical minorities in the United States. While Latinos' commonalities are often recognized in the U.S. context, the acknowledgment of their internal diversity includes examining the implications of the historical differences that shaped the experience of incorporation of the various national-origin groups encompassed by the term Hispanic.


n30. According to Teresa Sullivan, "the Cuban-origin population is concentrated in Florida, with a secondary concentration in New York City and its New Jersey suburban area. Many of the 'other Spanish' are found in New Mexico and Colorado, where it is believed that they are 'Hispanos' (the descendants of Spanish colonists ...). Sullivan, supra note 24, at 20.


n32. "Metizaje" refers to the cross between two races. Although it is now used often in the Latino community, it was originally used exclusively in reference to the cross between Spaniards and Indians.

n33. Nancy Saporta Sternbach notes:

In both literature and criticism, Malinche's mythical presence has affirmed the fact that neither Mexicans or Chicanos (although for different reasons in each case) have made their peace with her. When Chicana writers began their re-assessment, almost all of them spoke in counterpoint to Octavio Paz' landmark essay, "Los hijos de la Malinche," calling themselves instead "las hijas de la Malinche."

Saporta Sternbach, supra note 31, at 52.

n34. The Mexican history and present is plagued by illegal immigration. Thus, there are Mexicans who can trace their ancestry to the last century, and there are the newly arrived undocumented immigrants.

n35. In the early 1900s the Mexican "barrios" were formed. Joan Moore and Harry Pacho explain:

In nearly every city where there would be a sizable urban Mexican population, its rudiments had already appeared. Mexicans tended to settle together in distinctively "Mexican" neighborhoods or barrios. But the origins of these barrios often were different. One typical town plan in the border states was the settlement around a traditionally Mexican plaza (central area).


n36. See generally Pastora San Juan Cafferty, The "New" Immigration, in Hispanics in the United States: A New Social Agenda, supra note 24, at 35-36 (discussing patterns of immigration in the twentieth century). See also U.S. Department of Justice, Immigration and
Immigrants can be divided into five major categories: (1) those with official visas ("legals"); (2) undocumented immigrants ("illegals"); (3) braceros (seasonal farm workers on contract); (4) commuters (those with official visas who live in Mexico but work in the United States); and (5) "border crossers" (those with short-term permits, many of whom become domestics).

n37. See Martinez, supra note 36, at 44-46, 57; Joan Moore, Mexican Americans 49-51 (2d ed. 1976).

n38. Immigration and Nationality Act of 1965, 8 U.S.C. 1101, 1151 (1965). Growing concern over the presence of undocumented immigrants in the United States led to passage of the 1986 Immigration Reform and Control Act (IRCA). Its five provisions authorized: (1) legalization of undocumented immigrants residing in the U.S. continuously since 1982; (2) sanctions for employers who hire undocumented aliens; (3) reimbursement of governments for the added costs of legalization; (4) screening of welfare applicants for migration status; and (5) special programs to bring in agricultural laborers. In short, the law established penalties for employers who hire undocumented workers, as well as an identification system and an amnesty program for undocumented workers who resided in the United States for some time. Ironically, during the summer of 1987 the U.S. agricultural industry suffered a crippling shortage of seasonal workers - an unintentional consequence of IRCA. Fearing deportation under the new law, fewer Mexican workers crossed the border illegally, leaving U.S. crops to rot in the fields while confirming the industry's reliance on this illegal work force. Just over 3 million undocumented immigrants applied for legalization by the January 30, 1989, deadline; 1.7 million applications were ultimately accepted for adjustment to legal residence, representing approximately two-thirds of the estimated eligible population. Mexican immigrants made up three-fourths of those granted IRCA legalization. See Stephen Koepp, Rotten Shame: Who Will Pick the Crops?, Time, June 22, 1987, at 49. See also Susan Gonzalez Baker, The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act (1990); United States Immigration Policy toward Mexico, 84-85; Susan Gonzalez Baker & Frank Bean, The Legalization Programs of the 1986 Immigration Reform and Control Act, in In Defense of the Alien 3, 3-11 (Lydio F. Tomasi ed., 1990); Jacqueline Maria Hagan & Susan Gonzalez Baker, Implementing the U.S. Legalization Program: The Influences of Immigrant Communities and Local Agencies on Immigration Reform, 27 Int'l Migration Rev. 514 (1993); Cheryl Anderson, Immigration Bill Under Attack on Several Fronts, Austin American-Statesman, Dec. 1, 1982, at C1. The black/white Pdigm impeded the recognition of the Mexican-American population as a "minority." It was not until 1970 that the word "minority" expanded to include Mexican-Americans; before that time the tendency to think within the black/white Pdigm of urban minorities as simply American blacks greatly affected public policy. See Joan W. Moore, Minorities in the American Class System, 110 Daedalus 275, 275-302 (1981).


n40. Cafferty, supra note 36, at 40.

n41. It is difficult to define the "Chicano movement" in the 1960s and 1970s. As Fred A. Lopez III states:

The Chicano movement was a potent force in American society during the tumultuous decades of the Vietnam War, urban riots, the antiwar movement, and Watergate. One of several politically militant groups that began to challenge the hegemony of the ruling class in the 1960s and 1970s, the movement had several major components: Cesar Chavez and the United Farm Workers (UFW) in California, Reies-Lopez Tijerina's Alianza de Pueblos Libres (Alliance of Free Peoples) and the land-grants struggle in New Mexico, Rodolfo
"Corky" Gonzales and the Cruzada (Crusade for Justice) in Colorado, and the electoral movement of Jose Angel Gutierrez in South Texas. Out of this movement sprang hundreds of organizations whose purpose was to improve socioeconomic conditions for Mexican-American people.


n42. As Fred A. Lopez states:

The heterogeneous Chicano movement of the 1960s and 1970s was important to Mexican-Americans' struggle for political, economic, and social equality in American society. The record of success in these areas is mixed because of class, ideological, geographical, rural-urban, and age differences among Mexican-Americans. The four books under review [which analyze the Chicano movement and the LRUP] together represent a valuable contribution to our understanding of that era of political activism and confrontation with Anglo American society... [they] do much to explain the problems of leadership, lack of coherent ideology, lack of effective organization, conflicting goals and scarcity of resources that afflicted the Chicano movement, but there are still some gaping holes in this documentation. The role of women in the movement cries out for further research, and to date there is not comprehensive study of Chicano political alienation. The combination of Chicano ethnic consciousness with class consciousness to give rise to a new social awareness might help explain the absence of a Chicano movement in the 1980s and its replacement by a new "ethnic identity,' the Hispanic. Perhaps the least satisfying aspect of these works is the absence of a clear vision of the future for Chicanos in the 1990s.

Id. at 85

n43. LRUP's major successes occurred in Crystal City, a south Texas city mostly populated by poor Mexican-Americans. A cannery had come to that area in the 1940s, followed in the mid-1950s by the Teamsters' Union. The union gave workers job security and some political resources for electoral campaigns. During the 1960s LRUP became a leading political force in the area, and by 1970 Mexican-Americans had won control of the school board and city council. These new leaders hired more Mexican-American teachers, teacher aides, and administrators, started bilingual programs, and added Mexican-American history to the school curriculum. Mexican-Americans were hired or promoted to all levels of the city bureaucracy. Millions of dollars in federal aid poured in to support programs in health, housing, and urban renewal. See John S. Shockley, Chicano Revolt in a Texas Town 28-148, 162-77 (1974); Michael V. Miller & James D. Preston, Vertical Ties and the Redistribution of Power in Crystal City, 53 Soc. Sci. Q. 722, 772-84 (Mar. 1973).


n45. Borinquen, the original name for Puerto Rico, had a population of about 50,000 in 1493 when the Spanish reached the island. See Manuel Maldonado-Denis, Puerto Rico, A Socio-historic Interpretation 13-19 (Elena Vialo trans., 1972). As Joe R. Feagin and Clairece Bocher Feagin explain, it was the Spanish imperialism that produced the various races and ethnic backgrounds in the Puerto Rican Population:

Spain used the native people (the Taino) as forced labor in mines and fields. Forced labor, disease, and violent suppression of rebellions caused a decline in the native population, so slaves were imported by the Spanish from Africa to fill the gap. The absence of women among the Spanish colonizers led to marriages between Spanish men and Native American or African women, producing a blended population of significant size. Over time the population included a growing number.
of free blacks, since Spanish law allowed slaves to purchase their freedom. By 1530 only 369 of Puerto Rico's 3,049 inhabitants were European-born Spaniards. During the nineteenth century immigrants and refugees from numerous countries, both European and Latin American, made their way to Puerto Rico. The census of 1827 found that the proportions of whites and people of color in Puerto Rico were almost equal. By the end of the century the island's population comprised thirty-four nationalities. Puerto Ricans today are the product of many racial and ethnic streams.


n49. Until the 1930s Puerto Rico was ruled as an agricultural colony under various United States decrees. Through the 1920s and 1930s, the monopoly control of sugar cane plantations cut down the number of small farmers, the "jibaros." As a result, Puerto Rico lost its subsistence economy. Without wage labor, Puerto Rican migration to jobs on the mainland was inevitable. See Frank Bonilla & Ricardo Campos, A Wealth of Poor: Puerto Ricans in the New Economic Order, 110 Daedalus 133 (1981). Frank Bonilla and Ricardo Campos see the migration as an exchange of people for capital. In addition, they believe that the exchange process is still continuing in the series of federal efforts to "develop" Puerto Rico. According to Bonilla and Campos, these efforts are doomed to failure because the effect is always more poverty, forcing yet more people into migration. Id at 152. See also Rita M. Maldonado, Why Puerto Ricans Migrated to the United States in 1947-1973, 99 Monthly Lab. Rev. 7 (1976) (demonstrating that wage and unemployment rate differentials between the island and the mainland explain migration flows between 1947 and 1967, but in later years, return migration was motivated by additional noneconomic factors).

n50. Some scholars believe that the reason for the Puerto Rican mass migration after World War II was due to the failure of Operation Bootstrap in Puerto Rico. Operation Bootstrap was designed by Puerto Rican Governor Luis Muñoz Marin to bring about economic development by attracting United States corporations to the island. The lure under Operation Bootstrap was a ten-year exemption from local taxation as well as over wages on the mainland. Although many United States corporations came, and gross domestic product tripled between 1950 and 1970, the tax exemptions left the burden of financing the infrastructure on the local population, resulting in a high personal income tax rate. Moreover, Operation Bootstrap's emphasis on industrial development, as opposed to agriculture, led to a loss of agricultural jobs and a need to import food. See Adalberto Lopez, The Puerto Rican Diaspora, in Puerto Ricans: Their History, Culture and Society 313-343 (Adalberto Lopez ed., 1982). The opportunities offered Puerto Ricans were like those available for Mexican nationals. In the 1940s, Puerto Ricans started to work for industrial employers. In addition, Puerto
Ricans were also hired as agricultural workers - noticeable groups of Puerto Ricans began settling in New Jersey, New York, Massachusetts, and Michigan. See Edwin Maldonado, Contract Labor and the Origins of Puerto Rican Communities in the United States, 13 Int'l Migration Rev. 103, 103-21 (1979). In New York City Puerto Ricans worked in the cigar and garment industries. All early records in New York City demonstrate that the Puerto Rican islanders worked at unskilled jobs. See Virginia Sanchez-Korrol, From Colonia to Community: The History of Puerto Ricans in New York City (1994).


n52. See generally Padilla, supra note 51.


n54. See Joseph P. Fitzpatrick, Puerto Ricans, in Harvard Encyclopedia of Ethnic Groups 866 (Stephan Thernstrom ed., 1980); Felix M. Padilla, Puerto Rican Chicago 54, 99-143 (1987). Other organizations include: Puerto Rican Legal Project, the Puerto Rican Legal Defense Fund, the League of Puerto Rican Women, the Puerto Rican Teachers Association, the Puerto Rican Forum, and the Puerto Rican Family Institute. The Puerto Rican Teachers Association has worked to increase representation of Puerto Ricans among teachers and principals and to expand bilingual programs. Puerto Ricans have been active in labor and union organizations on the mainland since the late 1800s. Id. There have also been more militant groups. Joe R. Feagin and Claireece Bocher Feagin describe the actions of the Young Lords, a militant protest group patterned after the Black Panthers:

A New York group formed a Young Lords political party. In December 1969 these Young Lords occupied the First Spanish Methodist Church in New York City for eleven days and organized a day-care center, a breakfast program, and a clothing distribution program. They created a newspaper, Palante (Forward), and led a demonstration of two hundred Puerto Ricans protesting squalid conditions at a local hospital. The Young Lords, which had begun as a Chicago street gang, developed their own protest style. Children of poor immigrants, they articulated a thirteen-point program for a democratic-socialist society. They called for "liberation and power in the hands of the people, not Puerto Rican exploiters.' At the peak of their influence, the Young Lords had chapters in twenty cities. Militant Puerto Rican groups such as the Young Lords were subject to police repression, including infiltration of their groups and prosecution of some leaders, sometimes in rigged trials. Other leaders were co-opted into government antipoverty programs. The Young Lords gradually disbanded in the early 1970s. In 1989 many former members celebrated the militancy of the group and the twentieth anniversary of its founding. Many former members are today influential Puerto Rican professionals and leaders in community organizations.

Feagin & Feagin, supra note 45, at 353.

n55. Although Herman Badillo was the first elected member to the United States House of Representatives in 1972, Puerto Rican representation in 1992 tripled with the election of Jose Serrano (D-New York), Nydia Valezquez (D-New York) and Luis Gutierrez (D-Illinois). Information provided by the Midwest-Northeast Voter Registration Education Project.

n56. See U.S. Commission on Civil Rights, Puerto Ricans in California 16 (1980).

n57. See U.S. Commission on Civil Rights, supra note 47, at 19-25; Pedro A. Rivera, Angel and Aurea, 4 Wilson Q. 146 (Spring 1980). See generally C. Wright Mills, Clarence Senior, & Rose K. Goldsen, The Puerto Rican Journey (1950); Clara E. Rodriguez, Puerto Ricans: Born in the
n58. "Restlessness" has been characteristic of Caribbean islanders for many years. Returning Puerto Ricans are put into this broader context. See generally Juan Flores et al., La Carreta Made a U-Turn: Puerto Rican Language and Culture in the United States, 110 Daedalus 193 (1985). Several studies have focused on the history and development of the Puerto Rican community in New York. Among the most recent is Memorias de Mernardo Vega (Cesar Andreu Iglesias ed., 1977); Sanchez-Korrol, supra note 50.

n59. As Virginia Sanchez-Korrol states:

According to some of the early leaders of the Puerto Rican community, a sense of latinismo already existed among the migrants during the first decades of the migration. In part, this stemmed from an acute awareness of their historical place within the Ibero-American family.


n61. As Alberto Sandoval notes:

Ella, whose future in the U.S. remains vague unless she takes the "yellow brick road" to assimilation, assures a space for herself within the mental spaces of the past; but such displacement is not a reactionary nostalgia. Rather, Ella replaces her Latina identity at the axis of her historical present in the U.S., that is, at the crossroads of cultural frontiers. At this crux, the Anglo laws of assimilation collide with her Latina cultural survival instincts of disassociation, making her aware of the possibility of a terminal loss of Latino culture, memories, and past experiences. For this reason, Ella must reconstruct a new subjectivity - a bilingual/bicultural self in constant making - who refuses to be decentered, discontinuous, displaced at the margin, but that is at the same time a body of differences, inconsistencies, gaps, and antinomies in the eyes of the Anglo culture. As a result of this collision, the Latina subject is constantly aware of experiencing two socio-cultural territories and living in two linguistic horizons.


n62. Most of the history of Cuba has been characterized by foreign domination. From 1511 to 1898, it was ruled by Spain. "The long period of Spanish domination played a major role in forming Cuban culture." Thomas D. Boswell & James R. Curtis, The Cuban-American Experience 16 (1984). Thomas B. Boswell and James R. Curtis argue that Spanish domination set in place the circumstances for early Cuban migration to the United States:

The language, religion, economic institutions, and social structure of Spain were transferred to the island. Spanish law and policy kept the government highly centralized and, along with trade, in the hands of Spaniards. Virtually no industry developed. Sugar and, to a lesser extent, tobacco became the major cash crops. Society was highly stratified, with relatively few rich families and a large mass of poor people, many of whom lived as peasants in a predominantly rural environment. In short, it was not a life of equal opportunities for all individuals. Sixty years later a socialist revolution would occur that would seek to address some of these inequalities. Those who chose to migrate to the United States instead of suffering through the changes and dislocations created by communism
would carry with them many of the social and cultural attributes that their parents and grandparents had acquired during the Spanish phase of Cuba's history.

Id.

n63. Id.

n64. Thomas D. Boswell and James K. Curtis describe the corruption of political leaders in Cuba:

Sadly, between 1902 and 1959 Cuban leadership was characterized by intermittent indifference and ineptitude, as well as almost continuous corruption. Obtaining a national political office almost always guaranteed wealth. In 1909, for instance, Jose Miguel Gomez entered the office of President as a poor man and left a millionaire. Mario Garcia Menocal was worth perhaps one million dollars when he entered the Presidency in 1913. He left office eight years later with a fortune estimated at $40 million. The situation reached an intolerable level during the later states of the dictatorship of Fulgencio Batista, who dominated the political scene between 1933 and 1959. He was chief of staff of the army from 1934 to 1940 and in fact was in a stronger position than the President. In 1940 he was elected to the Presidency and served until 1944. In 1952 he again became President, but this time he did so through a coup d'etat. He legalized his position in 1954 when he was re-elected to the office, although he was the only candidate.

Id. at 17.

n65. The United States market for Cuba's sugar caused a rapid expansion in the amount of land used for its production. American capital was used to construct new sugar mills and plantations. By the late 1950s sugar accounted for about 80 percent of Cuba's total exports. See Robert C. West & John P. Augelli, Middle America: Its Lands and People 135-139 (1976).


n67. There were a number of Cubans who migrated to the United States in the nineteenth century. Most were from Cuba's middle and working classes, and although some settled in New York, Philadelphia, and Boston, most settled in south Florida. Most notably, a number of Afro-Cubans settled in Yber City and Tampace during the 1880s when cigar factories relocated there. See Masud-Piloto, supra note 66, at 7-11.

n68. In describing the agrarian reforms, Thomas D. Boswell and James R. Curtis argue:

In May 1959, the Castro government implemented its First Agrarian Reform Law. At that time only 8 percent of the landowners controlled 70 percent of the cultivated land. About 40 percent of this was farmed by poor sharecroppers and 25 percent of the best sugar acreage was in foreign hands. The 1959 law placed a limit of about 1000 acres, with some expectations, on the amount of land that could be privately owned. It also created the National Institute of Agrarian Reform (Institution Nacional de Reforma Agraria-INRA) that was to become responsible for planning future agricultural development. Most of the land that was confiscated was consolidated into large state farms, modeled after those established in the Soviet Union. About 100,000 sharecroppers were given "vital minimum" plots of approximately 67 acres to farm, if they wanted to work on their own land instead of a state-operated farm. Although the law provided for some compensation to be paid to the former landowners, almost all of them left the country and never received any payment.

n69. Feagin & Feagin, supra note 45 at 360.

n70. The term "Golden Exiles" has remained part of the way in which Anglo-Americans perceive Cuban Americans. The refugees were overrepresented in the legal and white-collar professions and underrepresented in the primary occupations (such as agriculture and fishing) and in blue collar jobs. However, the refugees were also a highly diverse group. Virtually all occupations were represented, making it incorrect to think of all of them as having been elites in Cuba. In fact, less than 40 percent should be so considered. Nevertheless, when considered as a whole, the refugees for the 1959 to 1962 interval were not representative of the entire Cuban population. See Boswell & Curtis, supra note 62, at 39.


n72. More than 215,000 Cubans migrated to America between 1959 and 1962. Although both critics and defenders of the Cuban revolution agree that those who have left the island do not represent a cross section of the total population, it is incorrect to claim that those Cubans in exile came exclusively from the privileged sectors of the island. See Richard R. Fagan, et al, Cubans in Exile: Disaffection and the Revolution 16-17 (1968). A study conducted in 1963 determined some of the reasons why Cubans migrated to Miami between 1959 and 1962. Twenty percent of those questioned stated that imprisonment or fear of imprisonment was the most significant motivating factor in their decision to leave. Another 20 percent indicated harassment and persecution. Thirty-seven percent said they left Cuba because they generally disagreed with government activities. Id. at 90.

n73. See Masud-Piloto, supra note 66, at 1-5.

n74. This federal program was a major asset in helping Cuban refugees resettle in the United States. Cubans are the only large group of Latinos who have been granted political refugee status and on that basis have been able to qualify for federal financial aid. Id. at 83-87.

n75. The missile crisis and United States military blockade of Cuba in October of 1962 brought an abrupt halt to all legal transportation between the two countries. See Boswell & Curtis, supra note 62, at 47.


n77. Air transportation was initiated on December 1, 1965, and continued until April 6, 1973. Normally 2 flights a day, 5 days per week, were operated between Miami and Havana, carrying 3000 to 4000 persons per month. It has been estimated that 297,318 persons arrived during the seven-year airlift. In addition, 4993 came by boat during the 2-month boatlift from Camarioca. A little over 302,000 Cubans migrated directly to the United States between October 10, 1965, and April 6, 1973. A few also continued to travel indirectly from Cuba via third countries, such as Mexico and Spain, to Miami and New York. See Alejandro Portes & Robert Bach, Latin Journey: Cuban and Mexican Immigrants in the United States 32-45 (1985).

n78. The flights were also known as the "Family Reunification Flights."


n80. A large percentage of the Marielitos were black. See generally Alejandro Portes & Alex Stepick, Unwelcome Immigrants: The Labor Market Experiences of 1980 (Mariel) Cuban and Haitian Refugees in South Florida, 50 Am. Soc. Rev. 493 (1985).

n81. The arrival of the "Marielitos" in Miami caused a great deal of intra-Cuban American community conflict. Thomas Boswell and James Curtis argue:
An opinion poll conducted by The Miami Herald in May 1980 determined that 68 percent of the non-Latin whites and 57 percent of the blacks surveyed felt that the Mariel refugees have had a largely negative impact on Dade County. In addition to the perception that the Mariel sealift was being used by Castro to empty his jails and mental institutions, there are at least four other reasons why the "Marielitos" were not welcomed upon their arrival in Florida. First, the suddenness and massive size of the influx intensified problems in helping them settle. Many who did not have relatives or friends to help them adjust were temporarily housed in military camps in Florida, Arkansas, Pennsylvania, and Wisconsin. One estimate is that it has cost the United States Government close to $1 billion to provide for the Mariel exiles, including the budgets for the Navy and Coast Guard operations that took place during the flotilla. A second reason for refugees from Mariel not being welcomed is that the United States' economy in 1980 was experiencing a recession, accompanied by inflation. In Dade County it has been estimated that the unemployment rate jumped from about 5 percent to 13 percent, primarily due to the Mariel influx. Also, the apartment vacancy rate was reduced to less than 1 percent, creating an acute housing shortage and high rents.

Boswell & Curtis, supra note 62, at 54. See also Feagin & Feagin, supra note 45.


n83. Id.

n84. Id.

n85. Id.

n86. Race is an important component of American society. T. Alexander Aleinikoff argues:

To say that race makes a difference means more than simply identifying material disadvantages facing people of color in contemporary America. It also recognizes that race may have an influence on how members of society understand their worlds and each other, and how such understandings may serve to perpetuate racial inequalities in our society.


n88. See Aleinikoff, supra note 86, at 1069.

n89. Id.

n90. I use the term "white America" somewhat reluctantly. In this article the term refers to more than just skin color, it refers to dominant values, ideologies, and power configurations that benefit whites and subordinate others. Embodied in the term "white America" is the term "white Supremacy." Frances Ansley would characterize my definition of "white American" in the context of what she calls the "race model." She observes:

What I call the "race model," characterizes white supremacy as an evil standing on its own base. In this view there is no reason to look beyond the system of racial hierarchy itself to understand its well-springs and strength. White supremacy produces material and psychological benefits for whites, while extracting a heavy material and psychological price from blacks. White supremacy is concretely in the interests of all white people. It assures them greater resources, a wider range of personal choice, more power, and more self-esteem than they would have if their were (1) forced to share the above with people of color, and (2) deprived of the subjective sensation of superiority they enjoy as a result of the societal presence of subordinate non-white others.


By "white supremacy" I do not mean to allude only to the self-conscious racism of white supremacist hate groups. I refer instead to a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings.

A few years ago I probably would have called this system "institutionalized racism." Today, however, in an era of so-called "color blindness," when "racism" can mean the disfavoring of a white person for the most transitory and isolated purpose, I believe white supremacy to be the more helpful and accurate term. While not denying that a system of black supremacy is conceivable in the abstract, the term "white supremacy" reminds us that the institutional racism of our place and epoch (our planet?) has been a racism of white over black. To my mind, any jurisprudence or politics of racial justice that fails to recognize and incorporate this overwhelming reality has missed the boat.

n91. Stereotypes determine our perception and judgment of others. Stereotypes are social constructs - shaped by social, economic, political and historical antecedents, and they are used in order to justify the subjugation, exploitation and even elimination of others. Social science research suggests that stereotypes serve as powerful mechanisms, supplying explanations for events even when evidence supporting nonstereotypical explanations exists. See Galen V. Bodenhausen & Robert S. Wyer, Jr., Effects of Stereotypes on Decision Making and Information-Processing Strategies, 48 Personality & Soc. Psychol. 267, 267-82 (1985). Individuals interpret situations and actions differently when the race of the actors varies. Galen V. Bodenhausen and Robert S. Wyer, Jr., noted:

The studies reported in this article were stimulated by our desire to determine more precisely how stereotypes influence information processing and decision making. In two experiments, participants received a "case file" of information about a target person who had engaged in a transgression, and they were asked to decide what punishment should be administered. In some cases, a transgression-related cultural stereotype of the target was activated before other information about him was presented. We addressed two basic questions: First, what implications is a stereotype likely to have for the interpretation of a transgression and why it occurred, and under what conditions is a stereotype likely to be applied? Second, what influence does a stereotype-based impression of a person's behavior have on the processing of other information about the individual?


These heritages are born from common Iberian parentage as well as from distinct national experiences. It is seldom recognized that while united by language, the groups are separated by national experience.

n93. The dominant group (white Americans) constructs categories of thought that appear objective and divorced from race, but which operate in conjunction with racial stereotypes to rationalize white domination. See generally Lynn D. Trost, Eastern Metaphysical Dualism as an Element in Racism 49 (John L. Hodge et al. eds., 1975) (observing the "dualistic nature" of racist beliefs, cultural Bases of Racism and Group Oppression).

n94. Most members of the Spanish-origin population - at least 60 percent - are of Mexican origin, divided between native-born Americans and immigrants; another 14 percent come from Puerto Rico and are
U.S. citizens by birth, whether they were born in the island or the mainland; the third group in size is Cubans, who represent about 5 percent and are, overwhelmingly, recent immigrants coming after the consolidation of a communist regime in their country. In addition to these major groups, there are sizable contingents of Dominicans, Colombians, Salvadoreans, Guatemalans, and other Central and South Americans, with their own distinct histories, characteristics, and patterns of adaptation. See generally Rodolfo O. de la Garza, Et Al., Latino Voices: Mexican, Puerto Rican, and Cuban Perspectives on American Politics (1992).

n95. According to Martha E. Gimenez:

The common experience of racism and discrimination among less privileged Latin Americans and members of U.S. minorities might become a strong basis for political alliances. Less privileged Latin American immigrants of non-European ancestry (e.g., displaced Central American peasants) and those who may be better off but come with no English-language skills tend to gravitate toward ethnic enclaves in which, classified as generic Hispanics by the authorities, the mass media, and the society in general, they confront problems and develop needs similar to those experienced by U.S. historically exploited minorities of Mexican and Puerto Rican descent. In fact, poor working-class Central and South American immigrants, legal and illegal, increase the ranks of the Hispanic poor, thus strengthening "majority" stereotypes about their permanent economic inferiority and cultural backwardness.


n96. The following table compares 1992 family income levels and poverty rates for mainland U.S. Latinos of Mexican, Puerto Rican, and Cuban origin with those of the European-origin population:

[SEE TABLE IN ORIGINAL]

Notice that on family income and poverty measures, mainland Puerto Ricans ranked lowest among the three Latino groups, followed by Mexican-Americans. Cuban Americans were closer to the European American population on these measures than they were to Mexican-Americans or mainland Puerto Ricans. In 1992 the median income for Mexican-origin families was only 59 percent that of European-origin families. The median income for Mexican-American men ($13,622) was less than 55 percent that of European American men ($24,994); the median income for Mexican-American women ($10,098) was 71 percent that of European American women ($14,241) but only 40 percent that of European American men. One must also keep in mind that Mexican-American families have more workers than European American families. In 1993 Mexican-American families were almost four times as likely to be in poverty as European American families, and almost 40 percent of all Mexican-American children below eighteen years of age were living below the poverty line. Mexican-Americans make up the majority of the population in Texas's lower Rio Grande Valley. The 37 percent poverty rate in the border town of Laredo, Texas is typical of the area. Mexican-Americans, who comprise 90 percent of Laredo's population, endure not only the absence of material goods but a daily devaluation of their self esteem and worth. Poverty "is systematically perpetuated by political and social institutions which justify and maintain a social order premised on inequality." See Feagin & Feagin, supra note 45, at 306.

n97. By the term "method of incorporation in the United States" I am referring to the distinct and diverse methods each of the Latin origin groups became associated with in the United States. With respect to Mexican-Americans and Puerto Ricans, their descendants of U.S. conquest were colonized by the United States at the turn of the century - not to be confused with recent immigrant arrivals from Mexico, Central or South America, or the Spanish-speaking Caribbean nations.

n98. The term "Amerindian" refers to early American indigenous populations. As Mark A. Burkholder and Lyman L. Johnson observed:
Although the Aztecs and Incas are the civilizations best known during the age of conquest, they constituted only a minority of the total Amerindian population and resided in geographic areas that together comprised only a small portion of Latin America's landscape. Araucanians, Arawaks, Caribs, Chibchas, Chichimecas, Ge, Guaraní, Mapuche, Otami, Maya, Quibaya, Taíno, Tepeanas, and Tupi joined a host of other peoples and linguistic groups that inhabited the Americas; together they formed a human mosaic whose diverse characteristics greatly influenced the ways in which colonial Latin America developed.


n99. See Sullivan, supra note 24, at 9. According to Teresa Sullivan:

One variable is race. The original Spanish colonists - and many of their descendants - are Caucasians phenotypically indistinguishable from the English colonists. Some of the Hispanic population, especially if that term is defined by Spanish surname, are American Indians. Others are Black, the descendants of African slaves brought to the Caribbean islands or (in small numbers) to Mexico. The descendants of these groups are the Hispanics, some of whom consider themselves to be a sepête "brown" race.

Id.

n100. I use the term "American racialized group" to describe racialization in an American framework. In America, race is conceived of as a dichotomous concept in which individuals are socially constructed and legally defined as being either white or non-white. Elizabeth Martinez explains with respect to racial issues, America has a "Black-white framework":

Three of the reasons for the Black-white framework of racial issues seem obvious: numbers, geography, and history. African-Americans have long been the largest population of color in the U.S.; only recently has this begun to change. Also, African-Americans have long been found in sizable numbers in most of the United States, including major cities. On the other hand, Latinos - to focus on this group - are found primarily in the Southwest plus parts of the Northwest and Midwest and they have been (wrongly) perceived as a primarily rural people - therefore of less note.


n101. The "Hispanic" label was created by the federal Office of Management and Budget in the 1970s. Some critics of the label contend that it has resulted in the creation of a "new minority group":

Because ethnic enumeration is an important political issue in the context of affirmative action and other laws intended to remedy the effects of historical economic and political discrimination, minority leaders have always been concerned with means to improve the Census Bureau's ability to identify and count minority populations. That the Hispanic label automatically produces greater numbers than identification by historical and political criteria (e.g., Puerto Rican, Mexican-American, Chicano, etc.) led Mexican-American, Puerto Rican, and Cuban leaders to lobby for its adoption... The inclusion in the census of a self-identification question that forces Mexican-Americans, Puerto Ricans, Cubans, Central and South Americans, and Spaniards to identify themselves as "persons of Spanish/Hispanic origin" has resulted in the political and statistical construction of a new minority "group," a group whose origins can be traced to statistical manipulation and the pursuit of immediate political advantage rather than to historical foundations.

Gimenez, supra note 95, at 10. For a detailed critique of the label, see Martha E. Gimenez, "Latino/Hispanic - Who Needs the Name? The Case Against Standardized Terminology, 19Intl J. Health Services 557 (1989).
n102. Martha Minow & Elizabeth V. Spelman, In Context, 63 S. Cal. L. Rev. 1597, 1601 (1990). Martha Minow and Elizabeth V. Spelman distinguish their meaning of "context" from the common usage of the word:

In contrast, we mean to signal with "context' a readiness, indeed an eagerness, to recognize patterns of differences that have been used historically to distinguish among people, among places, and among problems. This focus distinguishes our interest from what was probably a more common usage of "context' by the early pragmatists. Dewey, for example, stressed individual uniqueness when he looked to context; he maintained that perhaps the highest calling of our reason and intelligence was figuring out what to do when confronting moral problems.

Id. at 1600.

n103. I am using the terms "neutral" and "universal" not to refer to legal rules or standards, but to social and ideological ones. It is my belief that social and ideological standards, although perceived to the "neutral" and "universal," when applied to people of color have the same exclusionary impact as legal ones. Critical Race theorists have discussed the shortcomings of "neutral" standards in the context of jurisprudence. They contend that traditional jurisprudence is neither neutral nor legitimate and impose not justice, but power. See Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Pa. L. Rev. 561 (1984).

n104. The dominant group does not always act intentionally. An important part of the privilege of a dominant group is the ability to see itself as "normal" and "neutral." T. Alexander Aleinikoff argues:

Dominant groups may have neither the inclination nor the ability to be fully aware of their domination. Dominant groups generally do not consider themselves to be oppressive, particularly in a society in which tolerance for diversity is valued, and they can provide descriptions of themselves and the disadvantaged that explain inequality as either justified or natural. To the extent that these descriptions effectively absolve dominant groups of responsibility for inequality, and therefore from bearing any of the costs of ameliorating inequality, there is little motivation for the dominant culture to question them.

Aleinikoff, supra note 86, at 1084. See generally Kimberle Williams Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139, 151 (discussing that in discrimination cases, race and sex are significant only as they disadvantage victims; privilege is implicit and not perceived). MacKinnon eloquently describes this with regard to gender:

The male epistemological stance, which corresponds to the world it creates, is objectivity: the ostensibly noninvolved stance, the view from a distance and from no particular perspective, apparently transparent to its reality. It does not comprehend its own perspectivity, does not recognize what it sees as a subject like itself, or that the way it apprehends its world is a form of its subjugation and presupposes it.

Catharine A. MacKinnon, Toward a Feminist Theory of the State 121-122 (1989). The dominant group invents stories that create a shared reality in which their domination seems fair and neutral. See Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 Mich. L. Rev. 2411, 2412 (1989) ("The stories... told by the ingroup remind it of its identity in relation to outgroups, and provide it with a form of shared reality in which its own superior position is seen as natural."

n105. See Iris Marion Young, Justice and the Politics of Difference 163-168 (1990). Generally, the dominant group seeks to preserve its sovereignty by creating and enforcing definitions of social reality that maintain the current social boundaries,
excluding others from the privileges they enjoy. See Martha Minow, Foreword: Justice Engendered, 101 Harv. L. Rev. 10, 61 (1987) (discussing feminist recognition of the "power of naming" which takes "a male as the reference point and treats women as... 'different,' [and] "deviant"); Martha Minow, When Difference Has Its Home: Group Homes for the Mentally Retarded, Equal Protection and Legal Treatment of Difference, 22 Harv. C.R.-C.L. L. Rev. 111, 179 (1987) (discussing feminist recognition "that knowledge and identity are forged in social relationships"); Gary Peller, The Metaphysics of American Law, 73 Cal. L. Rev. 1151, 1282 (1985) (discussing the representation of social hierarchies through a language "which establishes the categories through which the relation with the social other is mediated"); cf. Mari J. Matsuda, Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction, 100 Yale L.J. 1329, 1398 (explaining how accent is a social construction that enforces social boundaries).

n106. 2 Justin H. Smith, The War With Mexico 310 (1963). Justin H. Smith received a Pulitzer prize in history for his two-volume book, which essentially blamed the Mexican-American War on Mexico, since they were unable to appreciate the benefits of democracy.


n108. See Acuña, supra note 107, at 12.

n109. See John Brenkman, Culture and Domination 4-7 (1987). Sometimes race gets lost in these conversations. Hence Bell Hooks observes:

Anyone witnessing the current cultural and academic focus on race has to note the new way race is being talked about, as though it were in no way linked to cultural practices that reinforce and perpetuate racism, creating a gap between attitudes and actions. There is even a new terminology to signal the shift in direction: the buzz words are difference, the Other, hegemony, ethnography. It's not that these words were not always around, but that they now are in style. Words like Other and difference are taking the place of commonly known words deemed uncool or too simplistic, words like oppression, exploitation, and domination. Black and white in some circles are becoming definite no-nos, perpetuating what some folks see as stale and meaningless binary oppositions. SetPted from a political and historical context, ethnicity is being reconstituted as the new frontier, accessible to all, no passes or permits necessary, where attention can now be focused on the productions of a privileged... discourse in which race becomes synonymous with culture. There would be no need, however, for any unruly radical black folks to raise critical objections to the phenomenon if all this passionate focus on race were not so neatly divorced from a recognition of racism, of the continuing domination of blacks by whites, and (to use some of those out-of-date, uncool terms) of the continued suffering and pain in black life.

Bell Hooks, Yearning: Race, Gender & Cultural Politics 51-52 (1990). I think that an antisubjugation principle that opposes racism, sexism, homophobia, and economic subjugation is necessarily linked to multiculturalism and the value of diversity. These values of rights and social justice are not simply closely associated, but rather they are necessarily of benefit to each other.


n111. I use the term "American identity" interchangeably with "American nationality" and "American character." As William Peterson, Michael Novak and Philip Gleason assert:
It is true that these are vague expressions, and that distinctions could be introduced among them, but their imprecision accurately reflects the indeterminacy of the phenomena to which they refer, and in common usage these expressions are more or less synonymous.

William Peterson, et al., Concepts of Ethnicity 57-58 (1980). With respect to the term identity they write:

The term "identity" has become indispensable in the discussion of ethnic affairs. Yet it was hardly used at all until the 1950s. The father of the concept, Erik H. Erikson, remarked on its novelty in his widely read book Childhood and Society (1950): "We begin to conceptualize matters of identity at the very time in history when they become a problem. For we do so in a country which attempts to make a super-identity out of all the identities imported by its constituent immigrants." In an autobiographical account published 20 years later, Erikson, himself an immigrant, quoted this passage and added that the terms "identity" and "identity crisis" seemed to grow out of "the experience of emigration, immigration, and Americanization."

The relationship between ethnicity and American identity - super-identity, as Erikson called it - is complex and elusive. The difficulty of talking about it is compounded because the terms we must use are inescapably multivalent and can be understood in many different senses. For this reason, it is desirable to be as explicit as possible about the terms at the outset.

Id. at 57.

n112. Id. at 58. The ethnic diversity of the American population was secondary:

The revolutionary generation was quite cognizant of the fact that nation building required not just fashioning viable political institutions but also nurturing an American nationality in keeping with the values, philosophy, and outlook embodied in the Constitution and the laws. The fact that the American people were of diverse ethnic strains was not overlooked in discussions of nationality, but because of the nature of the events that brought the nation to birth, the American identity was conceived primarily in abstract ideological terms. Ethnic considerations were subsidiary.

Id. at 58-59.

n113. See Oboler, supra note 4, at 19.


It is imagined as a community, because regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship. Ultimately it is this fraternity that makes it possible, over the past two centuries, for so many millions of people, not so much to kill, as willingly to die for such limited imaginings.

Id. at 7.

n115. Id. at 4.

n116. Id.

n117. See Oboler, supra note 29, at 18.

n118. According to Suzanne Oboler:

Indeed, insofar as the understanding of the U.S. national identity is invariably defined and shaped in relation to those conceived as "foreign Others" in the hemisphere, it is perhaps not surprising that in a period in which an increasing number of new nations were being established in the Americas, the contacts between this country and the newly formed Latin American national populations contributed toward creating representations in the United States of a unified image of the "American national community." Thus, I argue that the nation's identity was forged in the nineteenth century partially through the creation of racialized perceptions that homogenized Latin America's populations and that in turn set the context for the later emergence of the label Hispanic in the twentieth century. Based on the
development of ideologies that justified the expansionist actions of the United States in Latin America and the Caribbean, these perceptions reflected a peculiar fusion of the social status, race, and nationality of "foreign Others" in the hemisphere.

Id. The concept of "otherness" was not a new one to the Latin origin groups. Spain had utilized a Spanish grammar text as the colonial pretext for the assimilation of otherness and others. In 1492, Antonio de Nebrija wrote a book on the Castilian dialect, Gramatica de la Lengua Castellana (Ignacio Gonzales-Umbera ed., Oxford 1926) (1492), which was billed as the "companion of the Empire," an appropriate grammatical endorsement of Spain's ethnic assertion, religious and racial bigotry, as well as the ultimate "civilized" weapon for political expansionism among the illiterate.... Imperial grammarians established a test of literacy for Hispanic citizenship, which, if successfully passed, allegedly provided official entry into the Hispanic "Text of Otherness," a grammatical contract of servitude.

n119. Generally there have been two types of political responses of "white Americans" to "foreign Others": assimilation and pluralism. The assimilation response attempts to transform the foreign Others into some version of the dominant group, by requiring the minority to learn the language of the dominant group, to follow the cultural practices of the dominant group, and generally to adjust its social practices and rituals to conform to those of the dominant group. The second political response holds that differences are to be celebrated rather than feared. Michael Walzer contends that "the practical meaning of ethnic pluralism... is still being hammered out, in the various arenas of political and social life". Michael Walzer, Pluralism in Political Perspective, in The Politics of Ethnicity 13 (1982). For a good discussion on pluralism and diversity, see generally Lawrence H. Fuchs, The American Kaleidoscope: Race, Ethnicity, and the Civic Culture (1990); Law and the Order of Culture (Robert Post ed., 1991); Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law (1990); Iris Marion Young, Justice and the Politics of Difference (1990); "Race," Writing, and Difference, supra note 86.

n120. See Oboler, supra note 29, at 19.

n121. However, Arthur M. Schlesinger, Jr. asserts that multicultural orientation is that of a "cult... [that] exaggerates differences, intensifies resentments and antagonisms, drives ever deeper the awful wedges between race and nationalities. The end game is self-pity and self-ghettoization." Arthur M. Schlesinger, Jr., The Disuniting of America 102 (1992).

n122. See supra notes 45 & 94 and accompanying text.

n123. The term "native Hispanic" has also been used to refer to Mexican-Americans and Puerto Ricans.


n125. See supra notes 46 & 106-107 and accompanying text.


n127. See Gimenez, supra note 95, at 7-17.

n128. See infra notes 231-32.

n129. See infra notes 235-40.

n130. See infra notes 235-45.

n131. See Gimenez supra note 95, at 15.

n132. See supra, note 95 and accompanying text.
n133. See Gimenez, supra note 95, at 7-17.

n134. I use the term "constructs" to emphasize the nonexistence of some fixed meaning for "race" and "nationality." The meanings of these two terms have been filtered through the different perceptions of reality.

n135. See infra note 27-80.

n136. See infra note 280 and accompanying text.


n138. Many scholars believe that both Indians (Native Americans) and African Americans were not inclined to adopt the standards of civilizations accepted by other Americans. Oscar Handlin argues:

They refused to fall into settled ways of life; they rejected the learning of books; and they were slow to find the faith toward which the missionaries urged them. Contact with the whites seemed only to deprive the Indians of their primitive virtues. A dismaying series of reports to the Massachusetts Historical Society in the 1790's described the degeneracy of many tribes as they succumbed to the settlers' influence. Vice, intemperance, and disease were the products of such associations. In the face of this evidence, the belief that the red men would ultimately share the nationality of the whites was difficult to maintain.


n139. Oboler, supra note 29, at 19.

n140. Id.

n141. Id.

n142. Id. at 32-34.

n143. This fixed and concrete notion of race is usually referred to as "biological race." By biological race, I mean the idea that there is a genetic and physical basis for categorizing people into different races based on their possession of certain physical traits. Ian F. Haney Lopez argues that:

The idea that there exist three races, and that these races are "Caucasoid," "Negroid," and "Mongoloid," is rooted in the European imagination of the Middle Ages, which encompassed only Europe, Africa, and the Near East.. The peoples of the American continents, the Indian subcontinent, East Asia, Southeast Asia, and Oceania - living outside the imagination of Europe and Count Gobineau - are excluded from the three major races...

Ian F. Haney Lopez, The Social Construction of Race, 29 Harv. C.R.-C.L. L. Rev. 1, 13 (1994). For further criticism of the biological race theory, see Kwame Anthony Appiah, The Uncompleted Argument: Du Bois and the Illusion of Race, in "Race," Writing, and Difference, supra note 86, at 21, 36. Appiah states "the truth is that there are no races: there is nothing in the world that can do all we ask "race" to do for us... The evil that is done is done by the concept and by easy - yet impossible - assumptions as to its application." Id. See also Mastoshi Nei & Arun K. Roychoundhury, Genetic Relationship and Evolution of Human Races, 14 Evolutionary Biology 1 (1982).

n144. Michael Omi and Howard Winant argue that there is a "temptation... to imagine race as a mere illusion, a purely ideological construct which some ideal non-racist social order would eliminate." Omi & Winant, supra note 87, at 54. Henry Louis Gates, Jr. states "that 'races', put simply, do not exist, and that to claim that they do, for whatever misguided reason, is to stand on dangerous ground." Henry Louis Gates, Jr., Talkin' that Talk, in "Race," Writing, and Difference, supra note 86, at 402-03. Gates clearly rejects the existence of biological races and writes that "race, as a meaningful criterion within the biological sciences has long been recognized to be a fiction." Henry Louis Gates, Jr., Writing "Race" and the Difference it Makes, in Loose Canons 43, 48 (1992). However, despite Appiah's citation, Gates's position on whether races exist as a social phenomenon is less clear.

n146. Id. The key component of the process termed "racial formation" is human interaction or manipulation, as opposed to biological forces. Thus, "the processes of racial formation we encounter today, the racial projects large and small which structure U.S. society in so many ways, are merely the present-day outcomes of a complex historical evolution." Omi & Winant, supra note 86, at 61.

n147. A great number of works have been written generally on the constructed nature of human society. For an important work in this area, see Peter L. Berger & Thomas Luckman, The Social Construction of Reality: A Treatise in the Sociology of Knowledge (1966). See also Paul Atkinson, The Ethnographic Imagination: Textual Constructions of Reality (1990) (discussing the construction of sociological texts).


n149. Omi & Winant, supra note 86, at 54.

n150. Id. at 55. Omi and Winant argue that:

With this in mind, let us propose a definition: race is a concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies. Although the concept of race invokes biologically based human characteristics (so-called 'phenotypes'), selection of these particular human features for purposes of racial signification is always and necessarily a social and historical process. In contrast to the other major distinction of this type, that of gender, there is no biological basis for distinguishing among human groups along the lines of race. Indeed, the categories employed to differentiate among human groups along racial lines reveal themselves, upon serious examination, to be at best imprecise, and at worst completely arbitrary.

n151. Id. at 61. There are recent sociological works which have also explored the notion of race as a social process. See Ellen K. Coughlin, Sociologists Examine the Complexities of Racial and Ethnic Identity in America, Chron. Higher Educ., Mar. 24, 1993, at A7 (citing the following works as examples of this new trend: Richard D. Alba, Ethnic Identity: The Transformation of White America (1990); Stephen Cornell, The Return of the Native American Indian Political Resurgence (1988); Yen Le Espiritu, Asian American Panethnicity: Bridging Institutions and Identities (1992); Susan Olzak, The Dynamics of Ethnic Competition and Conflict (1992); Omi & Winant, supra note 86; Felix M. Padilla, Latino Ethnic Consciousness: The Case of Mexican Americans and Puerto Ricans in Chicago (1985); Mary C. Waters, Ethnic Options: Choosing Identities in America (1990)).

n152. See Acuña, supra note 107, at 14.

n153. See Victor M. Valenzuela, The Monroe Doctrine, in Anti-United States Sentiment in Latin American Literature, 11
The Monroe Doctrine declared that the entire hemisphere was in the United States sphere of influence, and that the principle of non-intervention by European powers applied to all former colonies of all European powers, not just those of Spain.

n154. See Oboler, supra note 29, at 33.

n155. The term "Manifest Destiny" was originally coined in 1845 by John O'Sullivan, then editor of the Democratic Review. See Oboler, supra note 29, at 34. The ideology quickly spread, and became President James K. Polk's rationale for not only the Mexican-American War but also for the annexation of more than half of Mexico's territory. Polk's war message of May 11, 1846, stated:

The strong desire to establish peace with Mexico on liberal and honorable terms, and the readiness of this Government to regulate and adjust our boundary and other causes of difference with that power on such fair and equitable principles as would lead to permanent relations of the most friendly nature, induced me in September last to seek reopening of diplomatic relations between the two countries.

... 

As war exists, and notwithstanding all our efforts to avoid it, exists by the act of Mexico herself, we are called upon by every consideration of duty and patriotism to vindicate with decision the honor, the rights, and the interests of our country.

See Acuña, supra note 107, at 14 (quoting The War with Mexico: Why did it Happen? 3, 6 (Armin Rappaport ed., 1964)). The ideology of the nation's Manifest Destiny was widely used by journalists and historians to spread the justification of the Mexican-American War and expansion. "Away, away with all these cobweb tissues of rights of discovery, exploitation, settlement, contiguity, etc... [The American claim] is by the right of our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federative self-government entrusted to us." Ramon A. Gutierrez, When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846 339-340 (1991) (quoting Frederick Merk, Manifest Destiny and Mission in American History 31-32 (1963)). See generally Reginald Horsman, Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism (1981).

n156. According to Rodolfo Acuña:

Manifest Destiny had its roots in Puritan ideas, which continue to influence Anglo-American thought to this day. According to the Puritan ethic, salvation is determined by God. The establishment of the City of God on earth is not only the duty of those chosen people predestined for salvation but is also the proof of their state of grace. Anglo-Americans believed that God had made them custodians of democracy and that they had a mission - that is, that they were predestined to spread its principles. As the young nation survived its infancy, established its power in the defeat of the British in the War of 1812, expanded westward, and enjoyed both commercial and industrial success, its sense of mission heightened. Many citizens believed that God had destined them to own and occupy all of the land from ocean to ocean and pole to pole.

See Acuña, supra note 107, at 13.

n157. Id.

n158. Ronald Takaki, for example, summarizes the nationalist and racist justifications for the Mexican-American War put forth by the editor of the Southern Quarterly Review in the editor's discussion of the significance of the "conquest of California":

The Mexican-American War had clarified the national purpose, [the editor] declared... United States troops had chastised arrogant and "fraudulent" Mexicans... "There are some nations that have a doom upon them... The nation that makes no onward progress... that wastes its treasures wantonly - that cherishes not its resources - such a nation will burn out... will become the easy prey of the more adventurous enemy."

n159. See Horsman, supra note 155, at 229-71.


n161. Haney Lopez, supra note 143, at 28.

n162. Leslie Fiedler is fascinated by the ambivalence in American literature about portrayals of Indians and blacks. Alternately, these people represent a lost Eden of strength and innocence and yet a hell of uncontrolled lustfulness and cruelty. Much the same is true of literary images of Mexicans and other Hispanics. Fiedler follows general theories of prejudice in suggesting that such ambivalence, deeply embedded in American culture, permits Anglo Americans to project their own unwanted impulses on the members of minorities. This is a cultural-psychological function of racial stereotypes, and it helps to explain why it is the mestizo (mixed-blood Hispanics) about whom the literary stereotyping was most glaring. The "pureblood Castilians," men and women alike, were seen in a relatively favorable light. See Leslie Fiedler, Waiting for the End 118-129 (1964).
n163. According to Rudolfo Acuña:

California, fronting the Pacific Ocean, was the most isolated province in New Spain. Travel by land or sea was slow, dangerous, and costly. The Spaniards did not colonize California until 1769, when Spain sent a majority of mixed-blood subjects - Spanish, Indian, and Black - to plant the Spanish flag and colonize the half-million indigenous peoples there. During most of the Spanish period, the mission system served as the backbone of colonialism. Gradually, civilian pueblos evolved from the presidios (forts) that supported the missions and chartered Indian communities. Spanish authorities allocated some land grants, and the rancho culture spread during this period. Labor, whether in the missions or on the ranchos, was performed mostly by the indigenous peoples. Because of California's location and Spanish policy forbidding trade outside the Spanish empire, trade did not regularly occur until after Mexican independence.

Acuña, supra note 107, at 107. There were similar literary accounts made about Mexicans in Texas. See Cecil Robinson, With the Ears of Strangers: The Mexican in American Literature (1963); see also De Leon, supra note 110 (discussing Anglos' attitudes toward Mexicans in Texas from 1821 to 1900). The famous Sam Houston, leader of the Texas Americans, "consistently thought of the struggle in his region as one between a glorious Anglo-Saxon race and an inferior Mexican rabble." See Horsman, supra note 155, at 213.

n164. "Californianos/a" is another name for Mexican-Americans residing in California.


n166. . Id.

n167. The term "custodians of democracy" is from Acuña, supra note 104, at 13.

n168. Kimberle Crenshaw describes the subordinate "other" in the context of African-Americans:

Like legal consciousness, race consciousness makes it difficult - at least for whites - to imagine the world differently. It also creates the desire for identification with privileged elites. By focusing on a distinct, subordinate "other," whites include themselves in the dominant circle - an arena in which most hold no real power, but only their privileged racial identity. Consider the case of a dirt-poor, southern white, shown participating in a Ku Klux Klan rally in the movie Resurgence, who declared: "Every morning, I wake up and thank God I'm white." For this person, and for others like him, race consciousness - manifested by his refusal even to associate with Blacks - provides a powerful explanation of why he fails to challenge the current social order.

Crenshaw, supra note 104, at 138 (footnotes omitted); accord Lynn D. Trost, Western Metaphysical Dualism as An Element in Racism, in Cultural Bases of Racism and Group Oppression 49, 49-84 (John L. Hodge et al. eds., 1975) (observing the "dualistic nature" of racist beliefs).


n170. See Farnham, supra note 165, at 413.

n171. Id. at 148. Richard Henry Dana, a proper Bostonian visiting California in 1835, described the Mexicans of California as "an idle, thriftless people." Richard Henry Dana, Jr., Two Years Before the Mast (reprint ed. 1965) (1840). The inhabitants were described by other observers, at best as a "proud, indolent people doing nothing but riding after herds from place to place." C. Camp, James Clyman: American Frontiersman 1792-1881, His Own reminiscences and Diaries 187 (California Historical Society 1928).

n172. Ian Haney Lopez states:

Race must be viewed as a social construction. That is, human interaction
rather than natural differentiation must be seen as the source and continued basis for racial categorization. The process by which racial meanings arise has been labeled racial formation. In this formulation, race is not a determinant or a residue of some other social phenomenon, but rather stands on its own as an amalgamation of competing societal forces. Racial formation includes both the rise of racial groups and their constant reification in social thought. I draw upon this theory, but use the term "racial fabrication" in order to highlight four important facets of the social construction of race. First, humans rather than abstract social forces produce races. Second, as human constructs, races constitute an integral part of a whole social fabric that includes gender and class relations. Third, the meaning systems surrounding race change quickly rather than slowly. Finally, races are constructed relationally, against one another, rather than in isolation. Fabrication implies the workings of human hands, and suggests the possible intention to deceive. More than the industrial term "formation," which carries connotations of neutral constructions and processes indifferent to individual intervention, referring to the fabrication of races emphasizes the human element and evokes the plastic and inconstant character of race.

Haney Lopez, supra note 143, at 27-28. For discussions on "racial formation" see Omi & Winant, supra note 86, at 55-56.

n173. See Farnham, supra note 165, at 30.


n175. Farnham, supra note 165, at 148.

n176. See Dana, supra note 171.

n177. Id. at 66.

n178. Id.

n179. On January 24, 1848, gold was found in California. By 1849 alone, 100,000 newcomers from all over the world arrived in California, including 8,000 Mexicans and 5,000 South Americans. See Oboler, supra note 29, at 25.

n180. According to Suzanne Oboler, in 1849 alone, 100,000 newcomers from all over the world arrived in California, including 8,000 Mexicans and 5,000 South Americans. See Oboler, supra note 29, at 25.

n181. Acuña, supra note 107, at 119 (quoting Leonard Pitt, Decline of the Californias 53 (1970)).


n183. The belief in the cowardice of Mexicans is illustrated in the simplified popular Anglo mythology about the defense of the Alamo. Legend built a story about how a small, but brave band of Anglo Texas rebels defied overwhelming numbers of cowardly Mexican troops. See David Montejano, Anglo and Mexicans in the Making of Texas, 1836-1986 4, 82-83; Arthur G. Pettit, Images of the Mexican American in Fiction and Film 45-46 (1980). See also Diego Vigil, Early Chicano Guerilla Fighters (1974).

n184. See Pettit, supra note 183, at 41-42.


n186. Id.

n187. For an excellent discussion on the images of Californianas, see generally Antonia I. Castaño, The Political Economy of Nineteenth Century Stereotypes of Californianas, in Between Borders: Essays on Mexicana/Chicana

n188. Id. at 221.


n190. Castañoeda, supra note 187, at 218.

n191. Id.


n194. Id. at 245-252.

n195. See Le Compte, supra note 160, at 17-35.

n196. Id.

n197. See Castañoeda, supra note 187, at 221.

n198. Id. at 227.

n199. Id. at 223.

n200. For example, in 1837 Alfred Robinson married Ana Maria de la Guerra of the elite de la Guerra y Noriega family of Santa Barbara. Id. at 218.

n201. The census and mission registers recording population, births, marriages and deaths during the Spanish period clearly indicate the racial (for both men and women) and class (occupations, for men only) origins of the people who came as military personnel or as settlers. While people often elevated their racial status in these records by designating themselves "Español" even though it was physically evident that they were of mixed blood, the records nevertheless reveal the population was largely mestizo, which included various racial mixtures. The following list of census records includes only those censuses which listed race and/or occupation for the Monterey District. Unless otherwise indicated, these records are all in the Bancroft Library, Provincial State Papers, Benicia Military; Real Presidio de Monterey, Lista de la compañía del referido presidio, 30 julio de 1782, Vol. IV, pp. 663-694; Lista de la compañía, 23 mayo de 1791, Vol. XV, pp. 10-12; Lista de los individuos de esta jurisdicción que se consideran aptos para el servicio en la compañía, 1805, Monterey; Padron del Real Presidio de Monterey, 1816, vol. 49, p. 894; Mission of San Carlos Borromeo, Book of Marriages, vol. I, 1772-1855 (Monterey: Archdiocese of Monterey). The Book of Marriages that researchers work with at the Archdiocese is a photocopy of the original Libro de matrimonios.


n203. See Oboler, supra note 29, at 36, quoting Frank Bonilla, Beyond Survival: Por que seguiremos siendo Puertorriqueños, in The Puerto Ricans 453-54 (Adalberto Lopez ed., 1974)).


n205. The Foraker Act of 1900 established the civilian government in Puerto Rico. For the most part, government power was placed in the hands of the President of the United States who appointed the island's Governor. The legislature was composed of an Executive Council and a House of Delegates. The Council contained an American majority, the members of the
House were elected by Puerto Rican voters. Any laws passed by the House were subject to veto powers of the United States Congress. See U.S. Commission on Civil Rights, Puerto Ricans in the Continental United States: An Uncertain Future 12-13 (1976).

n206. According to Suzanne Oboler: "This initially provoked heated partisan debate between Democrats and Republicans alike, both of which favored the bill's economic advantages while seeking to avoid blame for what were clearly colonialist implications of the new territorial status created for Puerto Rico." Oboler, supra note 29, at 37.

n207. Benjamin Ringer, "We the People" and Others: Duality and America's Treatment of Its Racial Minorities 973 (1983). Benjamin Ringer points out that varied political and economic concerns made it inexpedient for members of either party to raise the issue of race as part of the debate; but as the quote above illustrates, race was still part of the congressional dialogue. Id.


n209. In Puerto Rican society, the culture recognizes a spectrum of several racial categories based on multiple physical characteristics and not just skin color. In addition, Puerto Rican society is more integrated than United States society. See generally Clara E. Rodriguez, Puerto Ricans: Born in the U.S.A. 1-10 (1989).

n210. As Elizabeth Martinez observes:

To criticize the Black-white framework is not simply a resentful demand from other people of color for equal sympathy, equal funding, equal clout, equal patronage. It is not simply us-too resentment at being ignored or minimized. It is not just another round of mindless competition in the victimhood tournament. Too often we make the categories of race, class, gender, sexuality, age, physical condition, etc., contend for the title of "most oppressed." Within "race," various population groups then compete for that top spot. Instead, we need to understand that various forms and histories of oppression exist. We need to recognize that they include differences in extent and intensity. Yet pursuing some hierarchy of competing oppressions leads us down dead-end streets where we will never find the linkage between oppressions or how to overcome them.


n211. Several terms have been used to identify second-generation Puerto Ricans born and/or reared on the U.S. mainland. J.P. Fitzpatrick was the first to use the term "Puerto Rican Americans," but it was widely rejected by members of this group, who felt they were not "American"; others considered it redundant, since Puerto Ricans are U.S. citizens by birth. See J.P. Fitzpatrick, Puerto Rican-Americans: The Meaning of Migration to the Mainland 1-10 (1971). The term, "mainland Puerto Rican" became the more acceptable term, especially among scholars of the Hispanic experience in the United States refer to the second generation of "Puerto Ricans," as do a number of Puerto Rican scholars when referring to anyone of Puerto Rican ancestry or national origin. See M. Maldonado-Denis, Puerto Rico y Estados Unidos: Emigracion y colonialismo 3-7 (1976). The term "Nuyorican" has also been used, originating from the fact that the largest concentration of second-generation Puerto Ricans is in New York City. See E. Seda-Bonilla, Requiem por una cultura 1-5 (1972). See generally Virginia Sanchez-Korrol, Latinismo Among Early Puerto Rican Migrants in New York City: A Sociohistoric Interpretation, in The Hispanic Experience in the United States (Edna Acosta-Belen & Barbara Sjostrom eds., 1988).

n212. See Clarence Senior, Our Citizens from the Caribbean 16 (1965).

n213. According to Martha Gimenez:
These [classifications] are racist in that (1) they reduce people to a set of stereotyped, generally negative traits which presumably define their culture and identity and predict a given set of negative behaviors (e.g., high rates of crime, drug addiction, out-of-wedlock child-bearing, welfare dependency, etc.), (2) they reduce people to interchangeable generic entities, negating the qualitative differences between, for example, persons of Puerto Rican descent who have lived for generations in New York City and newly arrived immigrants from Chile or some other South or Central American country, and (3) they reinforce racism in the society as a whole by encouraging the perception of people in racial/ethnic terms rather than in such terms as social class or national origin.

Gimenez, supra note 95, at 8-9.


n216. I use the term "Latinos" here because by the turn-of-the century all of the three major Latino groups were in the United States.

n217. C. C. Young, Mexicans in California, Report of the Mexican Fact Finding Committee 46 (1930).

n218. For example, the Mexican population consists of various indigenous populations, descendants of enslaved Africans, and descendants of immigrant populations from every country in Europe, Asia, and the Middle East. See J. Jorge Kler de Alva, Telling Hispanics Apart: Latino Sociocultural Diversity, in The Hispanic Experience in the United States: Contemporary Issues and Perspectives 107-36 (Edna Acosta-Belen & Barbara R. Sjostrom eds., 1988).

n219. See Young, supra note 217, at 24.

n220. The Bureau of the Census informs the public about racial and cultural heterogeneity. Race and ethnicity statistics are compiled from three different questions on basic census data forms sent to households around the United States every ten years. The most important aspect of this information is that it is entirely self-reported.

n222. Id.


n224. Id. at 61.


n227. The number of Puerto Ricans in the United States before the island became a U.S. possession was small and consisted largely of prosperous merchants, political activists, and tobacco workers. Some 2,000 Puerto Ricans lived on the mainland in 1900; most of these were in New York City. Significant immigration to the mainland in response to unemployment and poverty on the island began in the late 1920s, and a somewhat smaller group came in the late 1930s. By 1940 mainland Puerto Ricans numbered almost 70,000; most continued to reside in various sections of New York City. Over the next two decades the number increased more than tenfold, to 887,000, the period called the "great migration." Between 1945 and 1970 about one in three Puerto Ricans left the island. Thousands were farm workers forced out of work by the aforementioned changes in agriculture. Puerto Rican communities were established in New Jersey, Connecticut, and Chicago, although the majority of new immigrants continued to settle in New York. See Lopez, supra note 50, at 318; Clara E. Rodriguez, Puerto Ricans: Born in the U.S.A. 1-10 (1989). Jack Agueros describes the surge of new immigration on established Puerto Rican communities on the mainland:

[World War II] ended and the heavy Puerto Rican migration began... Into an ancient neighborhood came pouring four to five times more people than it had been designed to hold. Men who came running at the promise of jobs were jobless as the war ended. They were confused. They could not see the economic forces that ruled their lives as they drank beer on the corners, reassuring themselves of good times to come while they were hell-bent toward alcoholism. The sudden surge in numbers caused new resentments, and prejudice was intensified. Some were forced to live in cellars, and were then characterized as cave dwellers. Kids came who were confused by the new surroundings; their Puerto Ricaness forced us against a mirror asking, "If they are Puerto Ricans, what are we?" and thus they confused us. In our confusion we were sometimes pathetically reaching out, sometimes pathologically striking out... Education collapsed. Every classroom had ten kids who spoke no English.


n228. The Bureau of the Census (as a result of intense pressure from Mexican-American groups) conducted a current population survey which had a specific sub-focus on Spanish-surnamed persons for the first time. In April, 1971, the Bureau published a report on Characteristics of the Population by Ethnic Origin: November, 1969 which lumped Mexicans and all other Spanish-surnamed or Indo-Hispanic groups together as "Spanish" in the tables. American Indians, Negroes, and most other nonwhite groups were simply thrown together in the "Other" category. Census officials stated that the data in the report on individuals of "Spanish" origin was, for the first time, based on questions asking individuals to self-identify based on origin or descent. Previously, officials had to infer a respondents national origin from information such as place of birth, country of origin, native language and surname. See Morton H. Sklar & Margaret A. Cotter, The Racial Data Policies and Capabilities of the Federal Government (U.S. Interagency Committee on Uniform Civil Rights Policies and Practices, Subcommittee on Racial Data Collection, 1971).
Among the many accomplishments of Latino political activism of this generation were the desegregation of public facilities such as theaters and swimming pools, the removal of discriminatory housing practices, increased political representation, and greater unionization of Mexican-American workers. Ignacio Garcia insists that these reforms be "seen as part of a historical process of change" and argues that together they formed the foundation upon which the better-known Chicano movement was built. See Ignacio M. Garcia, United We Win: The Rise and Fall of La Raza Unida Party, (1989); see generally Mario T. Garcia, Mexican Americans: Leadership, Ideology, and Identity, 1930-1960 364 (1989); Juan Gomez-Quiñones, Chicano Politics: Reality and Promise, 1940-1990, 265 (1990); Carlos Muñoz, Jr., Youth, Identity, Power: The Chicano Movement 216 (1990).


n231. See J. S. Siegel, Coverage of the Hispanic Population of the United States 34 (1979). In any case, the Bureau attempted to persuade us that Mexicans in the United States were 98.1% "white" while "Spanish origin" persons as a whole were 93.3% "white." The Bureau also sought to boost the totals of the "Spanish Heritage" population by counting all persons as "Spanish Heritage" in a household where only the "head or wife reported Spanish as his or her mother tongue" as well as all persons with a so-called Spanish surname in the five southwestern states. Thus, many intermarried persons were thrown into this category even if of non-Latin American background. See U.S. Bureau of Census, Subject Reports: Persons of Spanish Origin, 1970 Census of Population PC (2)-IC VII, IX, 46, Appendix at 5-6 (1973).


n233. Question 7 on the 1980 Census read as follows:

Is this person of Spanish/Hispanic origin or descent?
No (not Spanish/Hispanic)
Yes, Mexican, Mexican American, Chicano
Yes, Puerto Rican
Yes, Cuban
Yes, other Spanish/Hispanic

The term "Hispanic" was created by the federal Office of Management and Budget in 1970. The term "Hispanic" was operationalized as: "A person of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish culture or origin, regardless of race." Id.


n235. Id.

n236. Secondary "Hispanic" identifiers in the 1980 Census are: place of birth, ancestry, Spanish "race," surname, and language. Id.


n239. Id.

n240. Id. at 70.


Justice O'Connor maintained that creating majority-minority districts in order to comply with the Voting Rights Act does not by itself meet the compelling interest requirement under strict scrutiny. Justice O'Connor argued that a state must have a strong basis in evidence for concluding that the remedial action was necessary. According to the Court, a districting plan triggers strict scrutiny when a district is "so extremely irregular on its face" that it unequivocally reflects an effort to separate citizens on the basis of race. \[Id. at 2824.\] In Shaw, the triggering factors were: (1) that one district was "somewhat hook shaped," tapering to "a narrow band," with "finger-like extensions," resembling a "bug splattered on a windshield," and (2) that the second district wound "in snake-like fashion through tobacco country, financial centers, and manufacturing areas until it gobbled in enough enclaves of black neighborhoods," \[Id. at 2820-21,\] becoming so narrow in parts that "if you drove down the interstate with both car doors open, you'd kill most of the people in the district." (quoting state representative Mickey Michaux, in John Biskupic, N.C. Case to Pose Test of Racial Redistricting, Wash. Post, Apr. 20, 1993, at A4).

By biological race, I mean that there is a genetic and physical basis for categorizing people into different races based on physical characteristics transmitted by descent. Immanuel Kant's use of the German phrase for "races of mankind" in the 1770s was probably the first explicit use of the term in the sense of biologically distinct categories of human beings. See generally Michael Banton, Racial Theories (1987) (tracing the historical development of racial conceptions). See also Robert Miles, Racism (1989) (discussing differences underlying racism). Ian F. Haney Lopez argues that the concept of "biological race" maintains that: there exist natural, physical divisions among humans that are hereditary, reflected in morphology, and roughly but correctly captured by terms like Black, White, and Asian (or Negroid, Caucasoid, and Mongoloid). Under this view, one's ancestors and epidermis ineluctably determine membership in a genetically defined racial group. The connection between human physiognomy and racial status is concrete...

Haney Lopez, supra note 143, at 6. Neil Gotanda does not refer to Justice O'Connor's "skin color" argument as "biological race," but as "formal race." Formal race refers to the following:

Black and white are seen as neutral, apolitical descriptions, reflecting merely "skin color" or country of ancestral origin. Formal-race is unrelated to ability, disadvantage, or moral culpability. Moreover, formal-race categories are unconnected to social attributes such as culture, education, wealth, or language. This "unconnectedness" is the defining characteristic of formal-race, and no other usage of "race" incorporates the concept.

Gotanda, supra note 90, at 4.

members of racial groups have the commonality of interest implicit in our ability to talk about concepts like "minority voting strength' and "dilution of minority votes,'... and as long as racial bloc voting takes place, legislators will have to take race into account in order to avoid dilution of minority voting strength in the districting plans they adopt." Id. at 2845 (Souter, J., dissenting). Souter acknowledges that "members of the same race often have shared interests" other than physical appearance. Id. at 2846.


n258. See generally John E. Nowak & Ronald D. Rotunda, Constitutional Laws 14.3 573-90 (4th ed. 1990) (describing the multi-tiered framework for equal protection review). The Fourteenth Amendment was one of the "Civil War" amendments, and its purpose was primarily to alleviate discrimination against blacks. "Whatever the natural law background of the Fourteenth Amendment, there is universal recognition that a fundamental purpose of the framers was to address racial discrimination in the post-Civil War period." Mark G. Yudof, Equal Protection, Class Legislation, and Sex Discrimination: One Cheer for Mr. Herbert Spencer's Social Statics, 88 Mich. L. Rev. 1366, 1369 (1990) (reviewing William E. Nelson, The Fourteenth Amendment: From Political Principle to Judicial Doctrine (1988)). But see Nina Morais, Sex Discrimination and the Fourteenth Amendment: Lost History, 97 Yale L.J. 1153, 1154 (1988) (arguing that there is more than one possible reading of the amendment's purpose and that the framers could not possibly have intended it to apply only to blacks).

n259. See infra note 370.


n261. For an excellent discussion of "national origin" see Juan F. Perea, Ethnicity and the Constitution: Beyond the Black and White Binary, 36 Wm. & Mary L. Rev. 571, 574 (1995).


n263. Id. at 480.

n264. Id. at 480-81.

n265. Id. at 482.

n266. Id. at 479.

n267. Id. at 478.

n268. Id. at 481 n.12. For other cases using surnames synonymous with "national origin" or nationality, see Casta<n>ada v. Partida, 430 U.S. 482 (1977) (discrimination due to exclusion from grand jury service where the court used the terms "Spanish-surnamed" and "Mexican-American" as synonymous); and People v. Trevino, 39 Cal. 3d 667 (Cal. 1985) (holding that "Spanish surnamed" is sufficiently descriptive of a "cognizable group" for purposes of abuses of peremptory challenges by the prosecution). Compare Bueno-Hernandez v. Wyoming 724 P.2d 1132 (Wyo. 1986), cert. denied, 480 U.S. 907 (1987) (the Court held that a person's Spanish surname was not sufficient to support taking judicial notice that the individual had a Mexican-American background); and United States v. Castro, No. 91-3144, 1992 WL 37352 (10th Cir., 1992) (showing the court's unwillingness to sustain a challenge that a Hispanic had been excluded from the jury during voir dire based only on evidence that the potential juror had a Hispanic last name). See also United States v. Lane, No. 90 C 1474 1990 WL 133500 (N.D. Ill., 1990) (stating that a mere reference to Spanish-appearing surnames was not sufficient to raise an inference of the discriminatory use of peremptory challenges).


n272. Id. at 807-08.

n273. Id. at 808.

n274. See, e.g., Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1993) (employees received warning letters for speaking Spanish during working hours); Garcia v. Gloor, 618 F.2d 264, 268 (5th Cir. 1980) (employee fired for responding in Spanish to a fellow employee's work-related question, in violation of employer's English-only rule), cert. denied, 449 U.S. 1113 (1981).

n275. See Espinoza, 414 U.S. 86. The Equal Employment Opportunity Commission (EEOC) has developed an expansive conception of national origin discrimination in its Guidelines on Discrimination because of National Origin. The EEOC states that the statute protects against discrimination "because an individual has the physical, cultural or linguistic characteristics of a national origin group." 29 C.F.R. 1606.1 (1993).

n276. 414 U.S. at 87.


n278. A plaintiff may allege both theories on the same set of facts. See Teamsters, 431 U.S. at 335-36 n.15. Under disPte treatment, the plaintiff claims that an employer overtly treated applicants or workers differently based on their race, national origin, or other protected attribute. For example, an employer who hires only men for certain jobs commits a prima facie violation of Title VII under the disPte treatment theory. See Barbara Schlei & Paul Grossman, Employment Discrimination Law 13 (1983) [hereinafter Schlei & Grossman] ("The essence of disPte treatment is different treatment... It does not matter whether the treatment is better or worse, only that it is different."). With disPte treatment, "proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of differences in treatment." Teamsters, 431 U.S. at 335 n.15 (citation omitted). A disPte impact claim arises when an employer's facially neutral policy has the effect of discriminating against a protected class. For example, hiring only persons over six feet tall would constitute a prima facie violation of Title VII because of its disPte impact on women, as fewer women than men would meet the job requirement. See Griggs, 401 U.S. at 424; Dothard, 433 U.S. at 328-32 (invalidating height and weight restrictions for correctional officer positions because of disPte impact on women). Intent to discriminate is not necessary under disPte impact theory. See Griggs, 401 U.S. at 432.

n279. The statute's legislative history, though quite meager in this respect, fully supports this construction. Espinoza, 414 U.S. at 89. The only direct definition given the phrase "national origin" is the following remark made on the floor of the House of Representatives by Congressman Roosevelt, Chairman of the House Subcommittee which reported the bill: "It means the country from which you or your forebears came... You may come from Poland, Czechoslovakia, England, France, or any other country." Id. (quoting 110 Cong. Rec. 2549 (1964)). See also Stephen M. Cutler, Note, A Trait-Based Approach to National Origin Claims Under Title VII, 94 Yale L.J. 1164, 1169, n.25 (1985).

n280. 414 U.S. at 88.

n281. Perea, supra note 271, at 809.

n282. Id.

n284. Frank Valdes calls this phenomenon "the intersection of cultural and legal conflationary precepts and practices in contemporary America." Valdes, supra note 9, at 121.

n285. 500 U.S. at 369-70.

n286. Id. at 352-372.


n288. I use the concept of Pigeon as an "assumed theoretical category which classifies racial phenomena." Omi & Winant, supra note 86, at 164. See generally Thomas S. Kuhn, The Structure of Scientific Revolutions (2d ed. 1990).

n289. See Valdes, supra note 9, at 10.

n290. Ethnicity consists of a set of ethnic traits that may include, but is not limited to, national origin, ancestry, language, religion, traditions, and shared history. See Harvard Encyclopedia of American Ethnic Groups (Stephen Thernstrom ed., 1980). Ethnicity is an immensely complex phenomenon. Ethnic groups are characterized by some of the following features, although in combinations that vary considerably: common geographic origin; migratory status; race, language or dialect; religious faith or faiths; ties that transcend kinship, neighborhood, and community boundaries; shared traditions, values, and symbols; literature, folklore, and music; food preferences; settlement and employment patterns; special interests in regard to politics in the homeland and in the United States; institutions that specifically serve and maintain the group; an internal sense of distinctiveness; an external perception of distinctiveness. Thus, I see the conflation of ethnicity and race to be akin to the conflation of nationality and race.

n291. The plurality opinion found the following. The prosecutor offered a race-neutral basis for his peremptory strikes. The issue here is the facial validity of the prosecutor's explanation, which must be based on something other than race. While the prosecutor's criterion for exclusion - whether jurors might have difficulty in accepting the translator's rendition of Spanish-language testimony - might have resulted in the disproportionate removal of prospective Latino jurors, it is proof of racially discriminatory intent or purpose that is required to show a violation of the Equal Protection Clause. Hernandez, 500 U.S. at 359-61.

n292. The Court reasoned that the discrimination was race-neutral because it was based both on the jurors bilingualism and their demeanor, which was the basis for the prosecutor's doubt that these two Latino jurors could adhere faithfully to the official interpretation of the testimony before the court. Id. at 371.

n293. See Perea, supra note 261, at 595.


n295. Other ethnic traits include: skin color, physical features, gestures, mannerisms, speech, accent, surnames and ethnic insignia. See Perea, supra note 261, at 596 (quoting Gordon Allport, The Nature of Prejudice 131-32 (2d ed. 1988)).


n298. Hernandez, 500 U.S. at 372.

n299. Perea, supra note 261, at 596.

n300. Hernandez, 500 U.S. at 352.

n301. Id.

n302. Id. at 375.

n303. The exploration of "intersectionality" is one of Crenshaw's central themes. See Kimberle Crenshaw,

n304. See Crenshaw, supra note 104.

n305. Michael Arington, Note, English-Only Laws and Direct Legislation: The Battle in the States over Language Minority Rights, 7 J. L. & Pol. 325, 335 (1991) (suggesting that courts have not recognized language as a means of defining a suspect class); Linda M. Mealey, Note, English-Only Rules and "Innocent" Employers: Clarifying National Origin Discrimination and DisPte Impact Theory Under Title VII, 74 Minn. L. Rev. 387, 395 (1989) (noting courts' continuing refusal to apply heightened scrutiny despite evidence of past discrimination and the propensity of language classifications to discriminate invidiously); Note, "Official English": Federal Limits on Efforts to Curtail bilingual Services in the States, 100 Harv. L. Rev. 1345 (1987) ("Courts have so far been unwilling to deem language minorities a quasi-suspect class for equal protection analysis when parties claim an affirmative right to governmental accommodation."). Id. at 1353-54.

Some commentators have observed that language minorities share several characteristics with other groups that receive more favorable treatment under the Equal Protection Clause. Consequently, they argue, language classifications warrant a higher degree of equal protection scrutiny. See, e.g., id. at 1353-55 (noting that language minorities are easily identifiable, and have suffered a history of discrimination, mistreatment, and political powerlessness).

One problem with this argument is that individuals can learn and forget how to speak a language. As a result, language-speaking ability lacks the immutability common to most other suspect characteristics. See Frontiero v. Richardson, 411 U.S. 677, 686 (1973) (plurality opinion) (arguing that gender, like race and national origin, "is an immutable characteristic determined solely by the accident of birth"). Those suggesting that courts should review language classifications under heightened scrutiny typically deal with the immutability issue in two ways. First, they note that courts have applied heightened, or even strict scrutiny to classifications based on mutable characteristics. See, e.g., Graham v. Richardson, 403 U.S. 365, 371-72 (1971) (applying "close judicial scrutiny" to an alienage classification, even though naturalization allows individuals to change their status); see also Bill Piatt, Toward Domestic Recognition of a Human Right to Language, 23 Hous. L. Rev. 885, 901 & n.81 (1986) (arguing that choice of religion is protected even though it is a mutable characteristic) (citing Garcia v. Gloor, 618 F.2d 264 (5th Cir. 1980), cert. denied, 449 U.S. 1113 (1981)). Second, they argue that the ability to speak a language, as well as the characteristics associated with this ability, are often immutable. See Smothers v. Benitez, 806 F. Supp. 299, 306 (D.P.R. 1992) ("Knowledge of a language, insofar as it is an ethnic characteristic, leaves identifiable traces like accents, surnames and behavior patterns."); see also "Official English", supra note 305, at 1354 (suggesting that adults, especially those with low incomes, face particular difficulties in learning English); cf. Antonio J. Califa, Declaring English the Official Language: Prejudice Spoken Here, 24 Harv. C.R.-C.L. L. Rev. 293, 334-35 n.262 (1989) (citing a study demonstrating that learning a new language may be difficult for immigrants above a certain age).

n306. See, e.g., Frontera v. Sindell, 522 F.2d 1219, 1219-20 (6th Cir. 1975) (noting the state's interest in dealing in only one language in dismissing equal protection claim); Carmona v. Sheffield, 475 F.2d 738, 739 (9th Cir. 1973) (citing the state's finite resources to justify provision of services in English only).


n308. Id. at 41.

n309. Id. at 41-42 (concluding that the classification did not implicate Hispanics as an ethnic group because language does not identify members of a suspect class).
n310. Id. at 42-43.
n312. See Espinoza, 414 U.S. at 86.

n314. Some courts have held that 1981 does not encompass the claims of Hispanics when discrimination against them is viewed as national origin discrimination. See, e.g., Martinez v. Bethlehem Steel Corp., 78 F.R.D. 125, 129 (E.D.Pa. 1978) ("There is no "practical need' to extend 1981 protection to national origin because discrimination based on national origin is prohibited by the Civil Rights Act of 1964, 42 U.S.C. commonly known as Title VII."); Plummer v. Chicago Journeyman Plumbers Local 130, 452 F.Supp. 1127, 1142 (N.D.Ill. 1978) (Plaintiff allowed to amend complaint which initially asserted discrimination based on national origin. "It is well settled that discrimination based on national origin is not encompassed by section 1981."); Jones v. United Gas Improvement Corp., 68 F.R.D. 1, 15 (E.D.Pa. 1975) (The court limited 1981 protection to cases of discrimination where anyone in the United States was denied equal rights as white citizens in the United States. "Discrimination on other grounds, such as religion, sex, or national origin, to which white citizens may be subject, as well as white non-citizens, non-white citizens, or non-white non-citizens, is not proscribed by the statute."); Gradilles v. Hughes Aircraft Co., 407 F.Supp. 865 (D.Ariz. 1975) ("The [plaintiff's] allegations... [in the instant matter] being based solely on a claim for discrimination based on national origin are not within the confines or scope of... 42 U.S.C., Section 1981."). Other courts have allowed Hispanic plaintiffs and those of other ethnic groups to state a 1981 claim for discrimination on the basis of race and color; Cubas v. Rapid American Corp., 420 F.Supp. 663, 665-66 (E.D.Pa. 1976) (Cuban American plaintiff's 1981 action survived motion to dismiss on the ground that the court would not determine as a matter of law that the alleged discrimination did not contain elements of racial discrimination). Compare these cases with cases in which the courts have found that the scope of 1981 cannot be limited by any strict notion of "race." Rather, the courts recognize that the line between racial and national origin discrimination may not exist. Some courts thus conclude that plaintiffs must state a valid claim under 1981 regardless of whether their claim is characterized as one of national origin, race, alienage or ethnicity. See Manzanares v. Safeway Stores, Inc., 593 F.2d 968, 970-72 (10th Cir. 1979) (holding that plaintiff who alleged discrimination on the basis of his Mexican-American descent had stated a valid claim under 1981); Madrigal v. Certainteed Corp., 508 F.Supp. 310, 311 (W.D.Mo. 1981) ("Section 1981 should be construed to offer protection to persons who are the objects of discrimination because prejudiced persons may perceive them to be non-white, even though such racial characterization may be unsound or debatable."); Whatley v. Skaggs Companies, Inc., 502 F.Supp. 370, 376 (D.Colo. 1980) (Plaintiff's allegations of discrimination on the basis of his Mexican-American descent stated a claim under
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1981, citing Manzanares); Aponte v. National Steel Service Ctr., 500 F.Supp. 198, 202-203 (N.D. Ill. 1980) (Plaintiff's allegation that he was discriminated against because he was Hispanic found to state a cause of action under 1981, because "Hispanics" are frequently identified as "non-whites."); Garcia v. Rush Presbyterian-St. Luke's Medical Ctr., 80 F.R.D. 254, 263-64 (N.D. Ill. 1978) (There is a "practical need and a logical reason" to extend 1981 protection to Hispanic persons, who have been traditional victims of group discrimination); Ortega v. Merit Ins. Co., 433 F.Supp. 135, 139 (N.D. Ill. 1977) (recognizing that while the "pragmatic" approach presents difficulties in that groups may "drift within and later without Section 1981 protection,... there is both a practical need and a logical reason today to include people of Hispanic origin as a group entitled to the protection of 1981 against claims of discrimination...."); Enriquez v. Honeywell, Inc., 431 F.Supp. 901 (W.D. Okla. 1977) (adopting the Budinsky approach accepting Hispanic classification as a class provided protection under 1981.). See also Aponte v. National Steel Service Ctr., 500 F.Supp. 198, 202 (N.D. Ill. 1980) ("Persuaded by the often quoted rationale set out in Budinsky."); Badillo v. Central Steel & Wire Co., 89 F.R.D. 140 (N.N. Ill. 1981) (adopting the Budinsky approach accepting Hispanic classification provided protection under 1981.); Ortiz v. Bank of America, 547 F.Supp. 550 (E.D. Cal. 1982) (allowing a Puerto Rican woman to sue under 1981 by adopting the Budinsky "practical needs and logical reasons" test to determine her "racial character").


n316. Id. at 665.


n318. Id.


n320. 593 F.2d 968 (10th Cir. 1979).

n321. Id. at 970.

n322. Although beyond the scope of this Article, another possible avenue to strict scrutiny may lie in arguing that language classifications abridge a fundamental right. Cf. Harper v. Virginia Bd. of Elections, 383 U.S. 663, 670 (1966) (applying strict scrutiny to poll tax). In the context of language, a plaintiff might argue that language is a fundamental right in and of itself, Piatt, supra note 305, at 894-901, 906 (arguing that the right to speak one's own language is a right of all human beings), or that a language classification deprives a non-English speaker of other fundamental rights, see, e.g., Laura A. Cordero, Constitutional Limitations on Official English Declarations, 20 N.M. L. Rev. 17, 35-45 (1990) (arguing that courts have recognized that English-only restrictions are unconstitutional when they
burden educational or voting rights); Arington, supra note 305, at 336 n.71 (suggesting that language discrimination could prevent people from exercising fundamental rights such as voting).

n323. 797 F.2d 1511 (9th Cir. 1986) (en banc), vacated as moot, 484 U.S. 806 (1987). Despite the vacated judgment, other courts have cited the decision in Olagues with apparent approval. See Guitierrez, 838 F.2d at 1039 n.6 (endorsing the analysis in Olagues); Asian Am. Business Group v. City of Pomona, 716 F.Supp. 1328, 1330 (C.D. Cal. 1989) (following the analysis of Olagues to invalidate municipal ordinance); see also Smothers v. Benitez, 806 F. Supp. 299, 307 n.12, 308 (D.P.R. 1992) (observing that the reasoning of a vacated case may remain persuasive and considering the Olagues test "useful," but not dispositive).

n324. 797 F.2d at 1521.

n325. Id. at 1513.

n326. Id.

n327. Id. at 1514-15.

n328. Id. at 1521-24.

n329. Id.


n331. Id. at 961.

n332. Id.

n333. Id.

n334. Id.


n337. Many scholars have debated the OCR's motivation for expanding the coverage of Title VI. Some scholars have argued that Latino community leaders' efforts were the primary motivation of the OCR. See Peter Margulies, Bilingual Education, Remedial Language Instruction, Title VI, and Proof of Discriminatory Purposes: A Suggested Approach, 17 Colum. J.L. & Soc. Probs. 99, 120-22 (1981) (describing the text and legislative history of Title VI). Rachel Moran argues that "it appears more probable that federal officials at OCR were already receptive to claims that their enforcement regime also could rectify school districts' discrimination against linguistic minority students." Rachel Moran, The Politics of Discretion: Federal Intervention in Bilingual Education, 76 Cal. L. Rev. 1249, 1266-67 (1988).


n339. Moran, supra note 337, at 1266.

n340. Id.


n342. Id. at 275.

n343. Id. at 305.

n344. Rachel Moran argues:

By suggesting that something more than discriminatory effects must be shown in title VI cases, Bakke potentially reduced the instances in which federal officials could constrain state and local discretion on behalf of linguistic minority students. In Lau, the Court had presumed that school districts could reallocate resources to programs for NEP and LEP students without seriously undermining the curriculum for English-speaking students. An effects test that allowed for a broad federal role therefore was relatively palatable because linguistic minority students could be benefited without obviously harming other students. By contrast, affirmative action programs plainly imposed serious burdens on an identifiable class of whites. Under these circumstances, the Court no longer found broad-ranging federal intervention on behalf of minority students as attractive. Consequently, it sought to circumscribe federal involvement by imposing a higher threshold for finding a title VI violation.

Moran, supra note 337, at 1292-93.


n346. In Washington the Supreme Court upheld a civil service test administered to police academy applicants. Although proportionately more blacks than whites
failed the test, the Court found the test criteria rationally related to the test's purpose of finding qualified police officers and was not intended to discriminate against blacks. Id. at 245-48.

n347. See Moran, supra note 337, at 1293.

n348. 20 U.S.C. 1703 (1982). President Nixon first proposed the Equal Education Opportunities Act in 1971. Nixon stated that the statute's purpose was to shift the current emphasis from busing to the quality of education. 118 Cong. Rec. 8,928-29 (1972). For a thorough discussion of the legislative history of the Equal Education Opportunities Act see Martin Luther King Junior Elementary School Children v. Michigan Bd. of Educ., 451 F.Supp. 1324, 1330 (E.D. Mich. 1978). The Equal Education Opportunities Act created rights to education that were neither intended under Title VI nor previously protected by the Equal Protection Clause. See United States v. Hinds County School Bd., 560 F.2d 619, 624 (5th Cir. 1977) (indicating that Section 1703 guarantees public school children freedom from certain state acts and practices that were not proscribed under the equal protection clause); United States v. Texas, 506 F.Supp. 405, 432 (E.D. Tex. 1981) (explaining that the Equal Education Opportunities Act was clearly intended to "create new substantive rights for victims of discrimination, beyond that subject to challenge on constitutional grounds."); Martin Luther King Junior Elementary School Children v. Michigan Bd. of Educ., 451 F.Supp. 1324, 1331 (E.D. Mich. 1978) (explaining that the Equal Education Opportunities Act was more expansive than the Equal Protection Clause in its definition of equal educational opportunity). A violation under this Act can be found in a case of disPte impact, when one group is adversely affected to a far greater degree than any other group. See, e.g., Martin Luther King Junior Elementary School Children v. Michigan Bd. of Educ., 463 F.Supp. 1027, 1032 (E.D. Mich. 1978) (the court noted that under 1703(f) "the connection between failure to take appropriate action and race need not be in the form of an allegation of racially discriminatory purpose but may also take the form of an allegation of racially discriminatory effect."); Cintron v. Brentwood Union Free School Dist. 455 F.Supp. 57, 63 (E.D.N.Y. 1978) (finding that proposed restructuring of bilingual education plan was violative of 1703(f) even though the purpose of the restructuring was to account for a reduction in qualified bilingual education teachers following a court order that stated that teachers were to be dismissed based on their lack of seniority. More bilingual education teachers were released than English-speaking teachers, thus causing a disPte impact in the bilingual program).

n349. See supra notes 137-143.

n350. See supra notes 137-143.

n351. See supra notes 128-133 and accompanying text.

n352. See supra notes 128-133 and accompanying text..


n354. Id.

n355. Id. at 1188.

n356. Id. at 1187-88.

n357. Id.


n364. Id.

n365. Id.

n366. See supra note 302.

n367. See supra note 37.


n369. See Martinez, supra note 100, at 22-23.

n370. See generally Padilla, supra note 151.

n371. Martinez, supra note 100, at 23.

n372. I use the word "label" for two reasons:

(i) I want to emphasize the "negative" aspect of the term "Hispanic," and "label" brings out that negative connotation.

(ii) It is important to emphasize the fact that the term Hispanic was construed by non-Latino forces.

n373. See supra note 19 and accompanying text.

n374. See generally supra notes 90-94.

n375. See Oboler, supra note 29, at xvi.

n376. Id. See also supra notes 100-103.

n377. See supra note 182.

n378. Study: Latino TV Characters Often Negative or Absent, Newsday, Sept. 8, 1994, at A7.

n379. David E. Hayes-Bautista and Jorge Chapa note:

The term "Latino" is a generic one. It should be recognized that there are vast differences between different national origin Latino groups. Given the importance of immigration to the current explosive growth of the Latino population, it is imperative that the specific national origin of any Latino group studied be specified. The few recent studies that have investigated the social and economic characteristics of "Hispanic" subgroups have found that the differences are often greater than the similarities. There are also differences between U.S.-born and foreign-born Latinos. We strongly suspect that the same is true among direct health variables as well. For research, policy, and programmatic purposes, it is important to know if one is working with Mexican or Cuban origin Latinos. Thus, we propose that the term "Latino" always carry a national origin modifier, e.g., "Mexican-origin Latino." Only when speaking of a mixed Latino population (such as the entire Latino population of the US) should the term be used without a modifier.

Hayes-Bautista & Chapa, supra note 237, at 61.


n381. Id.

n382. See Gimenez, supra note 242, at 558.

n383. Id.


n385. Critical Race Theory emerged due to the "realization that the civil rights movement of the 1960s had stalled and needed new approaches to deal with the complex relationship among race, racism, and American law." Richard Delgado, The Inward Turn in Outsider Jurisprudence, 34 Wm. & Mary L. Rev. 741, 745 (1993). Derrick Bell and other scholars began writing about the way "civil rights statutes and case law reinforces white-over-black domination." Id. Since Derrick Bell began chronicling this phenomenon - in Derrick Bell, The Supreme Court, 1984 Term-Forward: The Civil Rights Chronicles, 99 Harv. L. Rev. 4 (1985) - there has been a veritable cornucopia of colored scholarship that is distinctly stylized. See Derrick Bell, And We Are Not Saved: The Elusive Quest for Racial Justice (1987); Regina Austin, Sapphire Bound!, 1989 Wis. L.


n388. Kimberle Crenshaw argues that "law is an essential feature in the illusion of necessity because it embodies and reinforces ideological assumptions about human relations that people accept as natural or even immutable." Crenshaw, supra note 20, at 1351-52.

n389. See infra notes 399-406 and accompanying text.

n390. My discussion of critical race theory presents my understanding, incorporation and emphasis. Richard Delgado refers to critical race scholars in these terms:

Whatever label is applied to this loose coalition, its scholarship is characterized by the following themes: (1) an insistence on "naming our own reality": (2) the belief that knowledge and ideas are powerful; (3) a readiness to question basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical examination of the myths and stories powerful groups use to justify racial subordination; (6) a more contextualized
(7) criticism of liberal legalisms; and (8) an interest in structural determinism - the ways in which legal tools and thought-structures can impede law reform.


n391. This term comes from Anthony E. Cook's description of the dual tensions in Critical Race Theory. He argues:

Any abstract universalism that denies the particularity of the Black experience and uncritically assimilates it into the experiences of others is problematic. Moreover, any concrete particularism that denies the possibilities of more universal connections that might bridge the gulfs that separate Black men from Black women, the Black poor from its middle class, and the Black race from other groups who have similar histories and trajectories is problematic as well. My hope is that Critical Race Theory can provide a critical process of talking across these spaces that define our separate-ness in ways that treasure the best of our separate-ness.

Cook, supra note 386, at 1008.

n392. For a discussion of how this black/white paradigm has also excluded Asian Americans, see Robert S. Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 Cal. L. Rev. 1243, 1267 (1993).


n395. Winthrop D. Jordan describes "attitudes" to be "discrete entities susceptible of historical analysis."

n396. See Acu<tilde n>a, supra note 107, at 209.

n397. See Crenshaw, supra note 20, at 1371.

n398. Id. at 1372.

n399. See supra notes 166-186 and accompanying text.


n404. See, e.g., Jerome Brunner, Pragmatics of Language and Language Pragmatics, 51 Soc. Res. 969 (1984) (arguing that language is essential to creating and operating within a social world).

n405. Sandra Maria Esteves, Yerba Buena 20 (1980).

I have a dream today! I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight and the glory of the Lord shall be revealed and all flesh shall see it together. n1

- Rev. Dr. Martin Luther King, Jr.

I am not certain what to make of Los Confundidos. n2 Perhaps this is best. Perhaps my confusion with Los Confundidos means that its author, Gloria Sandrino-Glasser, has made a real attempt to say something new. Any attempt, after its failure or after its success, is captivating, confusing and liberating. LatCrit Theory is captivating in that it is a new movement, and in today's motionless moment one's attention is immediately seized by anything, anything at all, because that might be Van Gogh's ear. n3 LatCrit Theory is confusing because it does not resemble anything that has gone before. Finally, LatCrit Theory may prove to be liberating if it lights a shining path out of the slavery we have grown accustomed to calling "permanent." n4

One night we suddenly went mad together again; we went to see Slim Gaillard in a little Frisco nightclub. Slim Gaillard is a tall, thin Negro with big sad eyes who's always saying "Right-o-ooni' and "How 'bout a little bourbon-arooni.' In Frisco great eager crowds of young semi-intellectuals sat at his feet and listened to him on the piano, guitar and bongo drums. n5

When I first began this Comment on Los Confundidos, I was lost in two first reflections. The first was a memory of a 1994 trip to Mexico - a journey south from San Diego to Tijuana that ended in Ensenada. There were unhappy indigenous people sitting on the sidewalks begging from everyone and selling less-than-trinkets to white tourists. I remember their brown skin, long black hair and pleading eyes. The other Mexicans I recall meeting in the flesh were all subsistence merchants who specialized in selling imitation "designer" products to tourists. I remember their brown skin, long black hair and pleading eyes. The other Mexicans I recall meeting in the flesh were all subsistence merchants who specialized in selling imitation "designer" products to tourists. These imitations were so poorly made that their only value came from the carefully-crafted counterfeit labels they bore. Living with this sort of economic desperation seemed to be an imitation of life. Finally, there was the spectral presence of the white Mexicans. I did not meet these ghostly Mexicans in the flesh. They appeared only on television screens and political billboards, not on the street and not in the shops. Their white faces looked down from the tops of buildings or
stared out from the other side of the television screens. Mexico seemed to me to be a nation of brown skin and white masks.

The white mask was presented to the world through the brooding omnipresence of absentee Overlords. Their European features were the one inescapable feature of the Mexican cityscapes strung like pearls along Route 1-D. These white-skinned Mexicans appeared to command everything and to be the "real" Mexico. A great ephemeral skin - an ineffable whiteness - settled upon all flesh we saw and made a sharp contrast to the brown skins of the of indigenous people on the sidewalk and of the other Mexicans who stayed chained to their shops. The people we met were all busy working to make themselves free. The indigenous people who, defeated in their battles to remain subsistence agriculturists were now engaged in subsistence begging, were brown, as were the countenances of the other Mexicans who were hard at work subsistence merchandising:

"Was no one aware of this?"
"Were we seeing what we were seeing?"
"What was real and what was projection?"

I wondered aloud as my companions and I wandered through Mexico.

My other first reflection was of the first LatCrit Theory conference, in La Jolla, California. The specter of the colorline has haunted the movement from its first moment. The workers in the toxic, non-union Maquiladoras just across the border are brown, not white. Poisoned by NAFTA and by world indifference, complicity and betrayal, who would save them now? The Overlords of the Mexican political-economy are white, not brown. The colorline that [*165] had seemed to run through everything that I saw as I followed Route 1-D south from Tijuana to Ensenada seemed to be nowhere present in our discussions at LatCrit. White-over-black is the order of things in every Spanish-speaking nation and community in the world - just as it is in the United States of America. Perhaps I was out of step. What was I doing at LatCrit?

And what of the black masks donned by the Zapatista Army of National Liberation? They began their fight against Neoliberalism and the New World Order on January 1, 1994, the day NAFTA became effective. It is the Spanish Civil War of our time and we only spoke of it with silence. Will LatCrit Theory take us to Chiapas? I had journeyed to the LatCrit conference to hear these questions addressed. In each first reflection - my first reflection on Route 1-D and my first reflection on the LatCrit Theory conference - I could see the other only as through a glass, darkly.

When he gets warmed up he takes off his undershirt and really goes. He does and says anything that comes into his head. He'll sing "Cement Mixer, Put-ti Put-ti' and suddenly slow down the beat and brood over his bongos with fingertips barely tapping the skin as everybody leans forward breathlessly to hear; you think he'll do this for a minute or so, but he goes right on, for as long as an hour, making an imperceptible little noise with the tips of his fingernails, smaller and smaller all the time till you can't hear it any more and sounds of traffic come in the open door. Then he slowly gets up and takes the mike and says, very slowly, "Great-orooni... fine-ovauti... hello-orooni... bourbon-orooni... all-orooni... how are the boys in the front row making out with their girls-orooni... orooni... vauti... oroonirooni...' He keeps this up for fifteen minutes, his voice getting softer and softer till you can't hear. His great sad eyes scan the audience. n6

I was still searching for the colorline when I agreed to comment on Los Confundidos. Sandrino-Glasser argues that "national origin," and not "ethnicity" or "race," should be the interpretive guide to reading the Latino/a experience. She examines the experiences of Latinos/as from Cuba, Puerto Rico and Mexico to show that although Latinos/as have been conflated, that is, thought of as a monolithic "race" or as a unitary "ethnicity," the Truth is that they are neither.

Sandrino-Glasser has done interesting research that places an intriguing set of new narratives before us. The details of Cuban, Puerto Rican and Mexican enclosures within the walls of the United States of America have not yet been examined sufficiently. Los Confundidos begins and presents that examination as another item on [*166] the agenda of the LatCrit Theory movement. That is the strength of Los Confundidos. What is confusing, however, is her view of other Others.

Los Confundidos suggests that while Latinos/as and Asian Pacific Americans are neither a "race" nor an "ethnicity," blacks are both a "race" and an "ethnicity." Sandrino-Glasser writes:

I use "Black" or "African-American" interchangeably to reflect that both terms remain current in that community. I capitalize these terms to reflect that they describe a cultural group rather than a mass of people with only a physical feature in common. n7

Such a reading of black flesh and its place en Los Estados Unidos is wrong and, if my reading of Los Confundidos is correct and not confused, it is reactionary. Why are blacks ("Blacks or African-Americans" to use Sandrino-Glasser's terminology) singled out for such odd treatment? Why are whites
given a very different status by Sandrino-Glasser? Sandrino-Glasser continues: "I leave "white" uncapsulated because I believe that the term "white" does not describe any cultural subgroup." n8 Her definitions are telling. The word "white" is not capitalized but the word "Black" is capitalized. I am black ("Black or African-American").

Her words trap me in my flesh. Like Fanon, I resist this thematization. n9 Sandrino-Glasser uses the terms "American Indian" and "Asian/Pacific Islander" to describe only "the collection of groups lumped together under that label." n10 It is clear that the racialization of "whites," "American Indians," "Asian/Pacific Islanders," and, of course, "Latinos/as" is in error. What makes the black situation different? Why are we and we alone left in the prison house of "race?" Do we not bleed? Los Confundidos participates in the oldest American tradition - treating blacks as children of a lesser god. This seems odd since Sandrino-Glasser herself, though perhaps not Los Confundidos, would be read as black in many parts of the United States of America. Black like me.

All communities are constellations that are dreamt around our otherwise undifferentiated and undifferentiable flesh. Sometimes we dream ourselves into being and sometimes others dream us into flesh not of our choosing. Blacks, like everyone else, are not a "race." There is no such thing as "race" save as a "social construction." Caste does not exist in nature. And there is nothing about race that is unrelated to caste. And there is nothing about caste that [*167] is unrelated to force. At least that's the way it works on the street where I live.

Blacks, like Latinos/as or Asian Pacific Americans, are neither an "ethnicity" nor a "race." We too may opt to consider ourselves an amalgamation of national origins - a "conflation" of national origins. We, especially, have been forcibly thematized as an amalgamation of national origins. What could more cruelly highlight this obvious fact than the Middle Passage? All manner of nations went into the wombs of those terrible ships to be born again "as blacks" after a transatlantic labor-of-hate.

Perhaps this comment seems personal? If so, it is because I have to wonder, now, whether I am one of the "African Americans" about whom Sandrino-Glasser writes. Do I really have an "ethnicity" and a "race?" Does my "black" flesh tell a tale that is true - a black ("Black" or "African-American") story, perhaps? Yes, according to Los Confundidos. Does Sandrino-Glasser's "Latina" flesh tell a tale that is false - a Latino/a story, perhaps? No, according to Los Confundidos. How did we travel from "yes" to "no?" What is your story?

To comment further I must examine myself. Traveling through the looking glass of Los Confundidos I suddenly seem to belong to a different genus - "Look! An "African-American'" or "Look! A "Black'":

I am given no chance. I am overdetermined from without. I am the slave not of the idea that others have of me but of my own appearance... I am laid bare. I feel, I see in those white faces that it is not a new man who has come in, but a new kind of man, a new genus. Why, it's a Negro! n11

I must refuse and resist. I want simply to be a person among other persons and so will try, despite the warnings of Los Confundidos, to find my way - despite my blackness - by looking to national origins and not to Darwin.

I am a Jamaican from Jamaica. I am also a citizen of the United States. n12 My brother, Felipe Jose Farley, is a Puerto Rican and, between college and law school, even played Center for the Piratas de Quebradillas, a professional basketball team in the Puerto Rican Superior League. Felipe was born while my family lived in Mayaguez, Puerto Rico. If National Origin is Truth then the Truth is that my brother is a Puerto Rican and a Jamaican and a United States citizen. I am an advocate of Puerto Rican independence - as [*168] an Independentista, am I also a Puerto Rican? As a brother to a Puerto Rican am I also, therefore, a brother Puerto Rican?

I am a Jamaican from Jamaica. My father is from Guyana and so perhaps my brothers, my mother and I are all Guyanese? I feel as Guyanese as I do Jamaican and I feel no contradiction with either origin.

I am a Jamaican from Jamaica. My mother, like my brother Christopher John Farley and me, is a Jamaican from Jamaica. We are all, today, United States citizens but only Felipe and my youngest brother Jonathan David Farley, were born citizens. Jonathan, born in Upstate New York, is also a Jamaican and a Guyanese and a Puerto Rican and all these things (a natural citizen of the United States, Jamaican, Puerto Rican and Guyanese) without contradiction. The rest of us were naturalized. Is such a thing really possible? What if I want to run for the Presidency of the United States?

I am a Jamaican from Jamaica. Should I envy my brothers' natural citizenship? Felipe's natural citizenship, however, confuses many white Americans because they do not understand that the colonized of Puerto Rico are, if born in Puerto Rico, born as citizens of the United States of America. Should Felipe envy Jonathan's natural citizenship? Am I an artificial citizen?
I am a Jamaican from Jamaica. As for the title "African-American" I reject it but in rejecting the title, am I not cleaving to the most "African-American" position of them all? Malcolm X, a great American if ever there was one, made it plain:

I'm not going to sit at your table and watch you eat, with nothing on my plate, and call myself a diner... Being here in America doesn't make you an American... No, I'm not an American. I'm one of the 22 million Black people who are the victims of Americanism. One of the 22 million Black people who are the victims of democracy, nothing but disguised hypocrisy. n13

Like Malcolm, I am not an American. I am a victim of Americanism. However, when I return to Jamaica my Jamaican fellow-nationals refer to me as an "American" and not, primarily, as a fellow-national. National origin is as confusing as every other imagined community and these metaphysical musings, mine and those of Los Confundidos, can go on forever. I have no country.

Dean stands in the back, saying, "God! Yes!" - and clasping his hands in prayer and sweating. "Sal, Slim knows time, he knows time.' Slim sits down at the piano and hits two notes, two C's, then two more, then one, then two, and suddenly the big burly bass-player wakes up from a reverie and realizes Slim is playing "C-Jam Blues' and he slugs in his big forefinger on the string and the big booming beat begins and everybody starts rocking and Slim looks just as sad as ever, and they blow jazz for half an hour, and then Slim goes mad and grabs the bongos and plays tremendous rapid Cubana beats and yells crazy things in Spanish, in Arabic, in Peruvian dialect, in Egyptian, in every language he knows, and he knows innumerable languages. n14

Journey back with me to the beginning of the nineteenth century and the state of North Carolina where in an action for "trespass and false imprisonment" the defense plea was that the plaintiff was a slave. In that case, Gobu v. E. Gobu n15 and thousands like it we find the colorline that is so maddeningly missing from the pages of Los Confundidos:

It appeared... that the plaintiff, when... about eight days old, [and the defendant] was of about twelve years of age, found him there, conveyed him home, and has kept possession of him ever since; treating him with humanity, but claiming him as her slave. The plaintiff was of an olive colour, between black and yellow, had long hair and a prominent nose. n16

A white girl finds a brown baby by the barn and keeps him as her slave and the court wrestles with the issue of color to settle the question of what their relationship will be. The legal texts over which we exercise such command also command us to be black or white or somewhere within or outside of the opposition between the Top and the Bottom that has come to be known as the colorline. The Motherland is that black space by the barn where slavery or freedom is decided. A freeborn person dies and a slave takes his place. And we should ask not for whom the bell tolls.

The court created the blackness that it claimed merely to recognize when it announced:

[170]

I acquiesce... to the presumption of every black person being a slave. It is so, because the negroes originally brought to this country were slaves, and their descendants must continue as slaves until manumitted by proper authority. If therefore a person of that description claims his freedom, he must establish his right to it by such evidence as will destroy the force of the presumption arising from his colour. n17

The slavery or freedom of the "olive coloured" foundling came after the court developed the peculiar metaphysics of racial difference:

The brown baby was set free. The "extremes of black and white" are visible only because the lens of legislative and judicial decisions made them so. The "extremes" mattered only because institutional arrangements made them matter: freedom or slavery matter. Our bodies and our desires have internalized the spectacle of the auction block and we now feel and see in the black and white and oftime "olive colours" painted on our flesh by the white masters of the entire menagerie. n19 The fact that race, like everything else, is "socially constructed" does not make it any less real than the rest of the world that our white masters
dreamed into existence. We need to stop dreaming with them.

Finally the set is over; each set takes two hours. Slim Gaillard goes and stands against a post, looking sadly over everybody's head as people come to talk to him. A bourbon is slipped into his hand. "Bourbon-orooni - thank-you-ovauti...' Nobody knows where Slim Gaillard is. n20

The Latino/a is a culturally constructed race/ethnicity that has been built by conflating a disPte set of national origins. The colorline runs through Los Confundidos as an imaginary space - Sandrino-Glasser calls it "race" and at other moments "ethnicity" - made visible only by blinding ourselves to the "reality" of national origins. The conflation of "race" and "ethnicity" is possible because of the colorline. The colorline is the way that masters' great dream of mastery is made real.

We need to look at prison. Attica is everywhere today. Prison is the white concrete dreamscape in which we are made to live their fantasies of absolute power. The spectacle of black flesh - and brown - in chains has captured the hearts and minds of so many people in this country our future looks like it is going to be a repetition of our past. We are involved in the most hallucinogenic war of all time - a war that dares not speak its name - a war that has simplified all previous conflicts into one. Today, as yesterday, the color [*171] line is between the prisoners and guards. Soon, too soon, we will all be one or the other. Which side are you on?

Dean once had a dream that he was having a baby and his belly was all bloated up blue as he lay on the grass of a California hospital. Under a tree, with a group of colored men, sat Slim Gaillard. Dean turned despairing eyes of a mother to him. Slim said, "There you go-orooni.' Now Dean approached him, he approached his God; he thought Slim was God; he shuffled and bowed in front of him and asked him to join us. "Right-orooni,' says Slim; he'll join anybody but he won't guarantee to be there with you in spirit. Dean got a table, bought drinks, and sat stiffly in front of Slim. Slim dreamed over his head. n21

We should not be afraid to ask the hard questions. National origin is an interesting question but national destination is a question that demands an answer. What will we do when the last prison cell is built? Seize the time! Audacity appears like Che:

If Che's sentiments appear ridiculous today, that is because we have failed - utterly and completely - to create a discourse in which our own salvation appears as a reasonable expectation. We have become our master's tools.

Sandrino-Glasser makes much of the "black-white Pdigm." n23 There is no such thing - except as a tool of the master. The phrase has, unfortunately, become a truism in LatCrit Theory. Rhetorical choices have political effects and the political effects of the phrase "black-white Pdigm" are reactionary. First, it serves white power to allow them to divert their eyes and attention away from the people they hate the most to the other Others whom they hate less. It is akin to saying "We talk too much about your former slaves, Boss." Second, the phrase "black-white Pdigm" is itself the kind of conflationary move that LatCrit Theory condemns.

Any brief look at "black" intellectual work on the colorline reveals a rich, sophisticated, nuanced body of work dealing with whites' other Others. Blacks have not been the authors of the so-called "black-white Pdigm." The use of the term "black-white [*172] Pdigm" in LatCrit Theory reveals that the term has been used without examining the "black" side of the "black-white Pdigm."

Those who use this term - "black-white Pdigm" - seem not to have carefully read works written by blacks. n24 We can begin with slavery. Frederick Douglass, an escaped slave, agitated for Chinese immigration:

I want a home here not only for the negro, the mulatto and the Latin races; but I want the Asiatic to find a home here in the United States, and feel at home here, both for his sake and for ours. Right wrongs no man. If respect is had to majorities, the fact that only one fifth of the population of the globe is white, the other four fifths colored, ought to have some weight and influence in disposing of this and similar questions. It would be a sad reflection upon the laws of nature and upon the idea of justice, to say nothing of a common Creator, if four fifths of mankind were deprived of the rights of migration to make room for one fifth. If the white race may exclude all races from this continent, it may rightfully do the same in respect to all other lands, islands, capes and continents, and thus have all the world to itself. Thus what would seem to belong to the whole, would become the property only of a part. So much for what is right, now let us see what is wise. n25
If a more eloquent move beyond the "black-white Pdigm" has been made then I have not seen it. Douglass is, of course, the central figure in United States intellectual history. We cannot talk about freedom or philosophy without first talking about the Narrative of the Life of Frederick Douglass, An American Slave, written by Himself. n26 Its author is also the central figure in "black" intellectual history in the United States. His philosophy on what was "wise" has also been echoed by virtually every major figure in "black" in [*173] intellectual history: "And here I hold that a liberal and brotherly welcome to all who are likely to come to the United States is the only wise policy which this nation can adopt." n27

To ignore Douglass and the "many thousands gone" is a bad thing to do. W.E.B. Du Bois wrote that "the colorline belts the world," n28 Booker T. Washington dedicated an entire chapter of his classic work, Up From Slavery, to the experience of black (African Americans) and red (Native Americans) at Tuskegee, n29 Paul Robeson was an international advocate for the workers of the world, n30 James Baldwin did not write Giovanni's Room for greater fame, n31 Huey P. Newton, was a philosopher of revolutionary intercommunalism, n32 the Black Panthers advocated "All Power to the People," Audre Lorde's Zami n33 is about the feeling of outsiders everywhere, Assata Shakur of the Black Liberation Army fought for everyone's freedom and escaped life imprisonment in the United States because she was able to obtain political asylum in Cuba, n34 Angela Y. Davis cannot be accused of being limited to "the black-white Pdigm" n35 - this list can go on and on and on. My point is that none [*174] of the canonical texts of the "black" experience are limited to the "black-white Pdigm." Why, then, is the phrase bandied about so often in LatCrit Theory?

The use of this phrase "black-white Pdigm" is a serious flaw in LatCrit Theory and in Los Confundidos. To ignore the black body of work and read only white writing on the colorline is unwise. To conflate black writing and white writing, specifically, to use the latter (white writing) to represent both (black & white together) is reactionary.

Just as the selection from Keroauc's On the Road that has traveled along with this Comment constitutes a friendly, yet ultimately vicious, image of the "black," so too does the constant incantation of the "black-white Pdigm." The Beat Generation pretended to listen to all that Jazz emerging from the black bodies to which they were so attracted, but in the end they only listened to themselves. We all have to watch the tendency to reaction. I say this in the ecumenical spirit of Huey P. Newton. Many will not recall Newton's arguments for joyful intercommunalism or even the fact that he earned a Ph.D. Too many people are too colorlined to pay much attention to the Black Panthers as political theorists. In a 1970 speech on the Gay Liberation and Women's Liberation Movements, Newton stated "When we have revolutionary conferences, rallies, and demonstrations, there should be full participation of the gay liberation movement and the women's liberation movement." n36 LatCrit Theory has been the open space in the Academy and, to the extent it remains open, will retain its "revolutionary" potential. LatCrit Theory's emphasis on the so-called "black-white Pdigm" risks caste-ing blacks aside. As a fellow-traveler in the LatCrit Theory Movement, I hope and expect that this Comment will be read as a friendly intervention.

Every time Slim said, "Orooni,' Dean said "Yes!' I sat there with these two madmen. Nothing happened. To Slim Gaillard the whole world was just one big orooni. n37

Everything in the current order of things conspires against us. Even now, the foundations are being poured for the cells that will one day hold those we love best (black & brown together). Slavery is our nation of origin and we must think about the deportation orders that are being written even as I write this Comment. Now, this moment, this instant, they are sending us back to the time of chains in ever-increasing numbers. The articles we write are a breath of cool Jazz in the academy ("one big orooni") but they need to be [*175] come something else. Something that shows the horror to come and the horror that is here and the horrific work we can no longer avoid. We are in a situation of total warfare. We die or we win.

Law is incredibly seductive. n38 So much so that the bodies it crushes with its prisons and its poverty will still swear eternal devotion. We need to cultivate the type of disloyalty that will re-light the fires of Nineteen Sixty-Eight. n39 LatCrit Theory can do this. n40 Remember, it was only the fire that time that caused our masters to let a token few of us into their Ivory Towers. Tragically, our presence inside has had a negative effect on the revolutionaries that got us inside:

The native is so starved for anything, anything at all that will turn him into a human being, any bone of humanity flung to him, that his hunger is incoercible, and these poor scraps of charity may, here an there, overwhelm him. His consciousness is so precarious and dim that it is affected by the slightest spark of kindliness. Now it is that the first great undifferentiated thirst for light is continually threatened by mystification. The violent, total demands which lit up
What is to be done? We must think about where we are going - prison - and show the way that the system's seductive promises - in which we all so desire to believe - are all lies. There are no "responsible" shining paths out of this trap - the Rev. Dr. Martin Luther King, Jr. is still dead. He was dead yesterday, he will be dead tomorrow and he will be dead forever unless the fires that greeted his passing in the Uprisings of Nineteen Sixty-Eight are lit again and again and again.

If we expose the legal system's bright, shining lies with audacity, others will come forward. We may all figure out which way the wind is blowing before it is too late. "And all flesh [may] see it together." n42

FOOTNOTE-1:

n1. Rev. Dr. Martin Luther King, Jr., I Have a Dream - August 28, 1963, quoted in Martin Luther King, Jr., I Have a Dream: Writings and Speeches That Changed the World 105 (James Melvin Washington ed., 1992).


n3. Vincent Van Gogh died as an unknown artist. No one wants to be among those who failed to understand in time. I borrow the metaphor "Van Gogh's ear" from a film about the life and times of artist Jean-Michel Basquiat. See Basquiat (Miramax 1996).

n4. See generally Derrick Bell, And We Are Not Saved (1987).


n6. Id. at 176.

n7. See Sandrino-Glasser, supra note 2, at 108 (emphasis added). What possible cultural thing could be shared by every black person in the United States of America other than, perhaps, the fact that we are all treated as "blacks?"

n8. Id.

n9. See Frantz Fanon, Black Skin, White Masks (Charles Lam Markmann trans., 1967).

n10. Sandrino-Glasser, supra, note 2, at 108.

n11. Fanon, supra note 9, at 116.


n15. 1 N.C. 100 (1802).

n16. Id. at 100.

n17. Id. at 101.

n18. Id. at 101-102.

n19. For a discussion of "race" as a form of pleasure and the colorline as a form of S&M, see generally Anthony Paul Farley, The Black Body as Fetish Object, 76 Or. L. Rev. 457 (1997).

n20. Kerouac, supra note 5, at 176.

n21. Id.

n22. See Che Guevara, Vietnam and the World Struggle for Freedom. This last known statement by Che Guevara was made "from somewhere in the world" to the Organization of Solidarity of the Peoples of Africa, Asia and Latin America. It was made public by the Prensa Latina news service on April 16, 1967, quoted in Che Guevara Speaks: Selected Speeches and Writings 159 (1967).

n23. See Sandrino-Glasser, supra note 2, at 72, 140.

n24. This is not to suggest that the writings of the black intelligentsia are the only markers of black contributions to contemporary ways of thinking. I recognize that there may be a popular voice that speaks a language quite distinct from the language of its official interpreters. I also want to make clear the fact that I am reacting to the political effects of a rhetorical choice. We do need to talk about the many ways in which...
white supremacy has injured various peoples. We also need to think about how we will speak of this damage. The statement "Let's move beyond the black-white Pdigm" is rhetorically/politically different from the statement, "Let's move beyond the white-supremacist language of black-or-white." The former is heard by whites as a way to relieve themselves of the burden of having to speak of their former slaves. The latter is heard by whites as challenge to yet another of their supremacist tactics. This Comment is written in an effort to encourage this latter voice.

n25. See Frederick Douglass, Composite Nation, quoted in Lift Every Voice: African American Oratory, 1787-1900, 488, 498 (1998). Douglass spoke powerfully in favor of Chinese immigration in a lecture presented in Boston as part of the Parker Fraternity Course on December 7, 1869.

n26. First published in the United States of America by the Anti-Slavery Office in 1845, Narrative of the Life of Frederick Douglass, An American Slave, written by Himself (1960), remains the most powerful statement of what is to be free, and what it is to be a slave.

n27. Douglass, supra note 25, at 498. Douglass’ philosophy went far beyond the so-called “black-white Pdigm”:

I need not stop here to name or describe the missions of other and more ancient nationalities. Ours seems too plain and unmistakable. Our geographical position, our relation to the outside world, our fundamental principles of Government, world embracing in their scope and character, our vast resources, requiring all manner of labor to develop them, and our already existing composite population, all conspire to one grand end, and that is to make us the most perfect national illustration of unity and dignity of the human family, that the world had ever seen.


n30. See Paul Robeson, Here I Stand (1958).


n33. See Audre Lorde, Zami: A New Spelling of My Name (1982).

n34. See Assata Shakur, Assata: An Autobiography (1987). Assata (slave name: Joanne Chesimard) reflects on her family history after settling in Cuba:

How much we had all gone through. Our fight had started on a slave ship years before we were born. Venceremos my favorite word in Spanish, crossed my mind. Ten million people had stood up to the monster. Ten million people only ninety miles away. We were here together in their land, my small little family, holding each other after so long. There was no doubt about it, our people would one day be free. The cowboys and bandits didn't own the world.

Id. at 274. Assata's sentiments, as a member of the Black Liberation Army, certainly go beyond the so-called "black-white Pdigm."


n37. Kerouac, supra note 5, at 177.

n38. See generally Farley, supra note 19.


n41. Frantz Fanon, The Wretched of the Earth 140 (Constance Farrington trans., 1963).

n42. See King, supra note 1.
INTRODUCTION: CONSTRUCTING LATINONESS: RUMINATIONS ON READING LOS CONFUNDIDOS

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SUMMARY: ... Americans and immigrants whose ancestry hails from the countries comprising Latin America do not fit comfortably in this black/white Pdigm. The peoples of Latin America are of mixed "races," a creolization of Native Peoples and the descendants of Spanish European colonizers and enslaved Africans. Accordingly, much confusion surrounds the "racial" classification of these peoples in the American "race" schematic. Sandrino-Glasser additionally argues that a result of this confusion is the treatment of diverse Latin American peoples as a homogeneous nation-like group on which a categorical identity - "Latino" - is then imposed. Mexicans, Puerto Ricans and Cubans, the three groups Sandrino-Glasser specially addresses, are merged into a distinct virtual nationhood because they all originate not only from outside the geographic, but also the cultural, boundaries of the United States. More important, the clumping together of these diverse peoples on the basis of nationhood has facilitated a conflation of nationality categories with "race"
concepts to form "Latino," an identity that is oppositional to both the "white" and "black" identity categories.

What follows are my ruminations on some of the larger points of Sandrino-Glasser's thesis, which furnishes a compelling reason for examination of the framework within which a "Latino" identity is constructed.

II. The Not So Puzzling Persistence of the Black/White Paradigm

In Los Confundidos Sandrino-Glasser asserts that "although some critical race scholars have recognized the need for diversity in Critical Race Theory, the focus remains for the most part on a white/black racial paradigm." n2 This assertion echoes the claims of many other scholars of color seriously concerned with racialized subordination and the terms of its existence in American culture and legal jurisprudence. On one hand, there is greater recognition of what David Hollinger identifies as an "ethno-racial pentagon" or "five-part demographic structure," within which individuals must routinely declare themselves "Euro-American (or sometimes white), Asian American, African American, Hispanic (or sometimes Latino), and Indigenous Peoples (or sometimes Native American)." n3 But at the same time, the doctrinal rules and policies of "racial" remediation are all too often restrictively predicated on bi-polar "racial" identities.

Many have sought to understand the persistence of the black/white paradigm in light of the European American experiences with immigration and the African American struggles for civil rights. n4 I will not rehearse those observations here. Instead, I will attempt an explanation of the black/white paradigm and its persistence in terms of the intellectual heritage of Euro-American modernity and the ontological narrative of American nation-ness. My argument in particular is that the black/white paradigm is a predominant organizing - constitutive - theme of Euro-American modernity. The black/white paradigm is inconceivable and incomprehensible without understanding how "European" or "white" identity was created by encounters with others deemed to be "savages."

The first European encounters with peoples of color in what is now the United States of America were with Native Peoples, "red" peoples, if you will. Why not, then, a red/white paradigmatic understanding of "race" in America? Without doubt, as the historian Ronald Takaki in his essay The "Tempest" in the Wilderness argues, "the native people of America were viewed as the "other." n5 They appeared to lack everything the English identified as civilized - Christianity, cities, letters, clothing, and swords. Native Peoples were viewed as cruel, barbarous and backwards. They were thought of as governed by their passions and libidinal energies, and thus, they personified "savagery." They were exactly what their English colonizers feared becoming:

To the colonists, the Indians were not merely a wayward people: they personified something fearful within Puritan society itself... Indians failed to control their appetites, to create boundaries separating mind from body. They represented what English men and women in America thought they were not - and, more important, what they must not become. As exiles living in the wilderness far from "civilization,' the English used their negative images of Indians to delineate the moral requirement they had set up for themselves. As sociologist Kai Erikson explained, "deviant forms of behavior, by marking the outer edges of group life, give the inner structure its special character and thus supply the framework within which the people of the group develop an orderly sense of their own cultural identity... One of the surest ways to confirm an identity, for communities as well as for individuals, is to find some way of measuring what one is not.' By depicting Indians as demonic and savage, the colonists... were able to define more precisely what they... [feared becoming]. n6

Native Peoples were not the only representations of "backwardness" and "savagery" available to Europeans during the period of American colonization. The Europeans colonizing America were descendants of Europeans who three centuries earlier made contact with Africa. And as portions of Patrick Brantlinger's important essay, Victorians and Africans, demonstrate, many Europeans believed Africa to be the center of evil, a hell on earth, a dark continent on which "savagery" reigns. n7 Africans, accordingly, were constructed as primitives possessed by demonic darkness. And as in the case of the Native Peoples of America, Europeans displaced their own "savage" impulses on to Africans, for within the myth of the dark continent was a "submerged fear of falling out of the light, down the long coal shute of social and moral regression." n8

Importantly, European ideology of "savagery" was developed and nurtured at a time of expansion and empire building. Europeans ascribed "savagery" to Native Peoples and Africans, and then invoked it in a socio-political context of conflict and competition over land and labor to justify the subjugation, exploitation, enslavement and even the elimination of Native Peoples and Africans.
The construction of "savages," was (and still is) crucial to Euro-American modernity with its obsessions with boundaries (mind/body, reason/passion, reason/morality, science/superstition), and pretensions to order, civility, rationality and progress. Encounters with Native Peoples and Africans facilitated the European understanding of "rationality" and "civilization" since to a great extent the content of these concepts was dramatically demonstrated through European efforts against the "ignorance" and "barbarity" of Native Peoples and Africans. "Savagery," then, was the contrasting image of the European (and in time, the American as well).

While Native Peoples and Africans were similarly constructed as "savages," Europeans drew a distinction between the two that, to this day, informs the black/white Pdigm. It was possible to educate and thus "civilize" Native Peoples, but not Africans. In Virginia, for example, where the "savagery" of Native Peoples was viewed largely as cultural, n9 Thomas Jefferson implored them to abandon their way of life - nomadic hunting, for example - and to adopt the culture of the white man. n10 Jefferson expected Native Peoples to "enclose farms as private property and learn arithmetic so they would be able to keep accounts of their production." n11 Ultimately for Jefferson, as Takaki points out, "Indians as Indians would not be allowed to remain within the borders of civilized soci[*181]ety." n12 Their option on one hand was to continue their "barbarism" and face removal or even extermination, or, on the other hand, renounce their ways - in other words, denounce their Indianess - and step within the boundaries of "civilization."

Africans, by contrast, were thought of as beyond the redemptive grasp of "civilization." History, according to noted philosopher Hegel, is the story of "Civilization." And, Hegel infamously placed the African outside of "civilization" because Africa "is no historical part of the world." n13 Indelibly located outside the boundaries of "civilization," Africans were thought incapable of relinquishing their "savagery." To Europeans, Africans were less than primitive, they were below the lowest starting point on a human evolutionary scale. n14 And as such, incompetent candidates for human advancement.

Pointing to a distinction between the "savagery" of Native Peoples and that of Africans is not to deny the fact of European extermination of and domination over Native Peoples. It is, however, to acknowledge that the "savagery" of Native Peoples and that of Africans was constructed differently. It is also to illustrate an unmatched ontological and epistemological distance between Africans and Europeans.

Any doubts that notions of African "savagery" endure in contemporary American "race" discourse is easily dispelled on reading Andrew Hacker's influential Two Nations, in which he writes:

Black Americans came from the least-known continent, the most exotic, the one remotest from American experience. Among the burdens blacks bear is the stigma of "the savage," the proximity to lesser primates. Hence the question in many minds: Can citizens of African origin find acceptance in a society that is dominantly white, Western, and European? n15

For Hacker the answer to that query is evidently "No," since, in his estimation,

the "Africa" in African-American contrasts with much of the European structure of technology and science, of administrative systems based on linear modes of reasoning. Today, Africa is the least developed and most sorrow-ridden of continents. It has more than its share of malnutrition and debilitating diseases, and at least its share of tribal rancor and bloodshed. It seems always to be petitioning the rest of the world for aid. Since the close of the colonial era, over a generation ago, there have not been many African success stories. n16

The thrust of my argument is that persistent reference to, and framing of "race" matters in terms of a black/white Pdigm is a contemporary, polite euphemistic way of talking about "savages" and "civilization." A black/white Pdigm directly implicates two, and only two, "racial" groups only to the extent that African Americans or "blacks" embody "savagery" and European Americans or "whites" embody "civilization." The reality, however, is that a black/white Pdigm links not just African Americans and European Americans in a peculiar calibration of "civilization." Operationally, a black/white Pdigm configures all racialized groups, including Latinos, into a web of social relationships with each group pitted against the other and vying for the honorific designation - "civilized."

III. The Fact of Latinoness

The fact of blackness, as noted by Frantz Fanon, is the composition of the "self as a body." n17 To be black is to be burdened with a bodily self-consciousness. As Fanon explains,
In the white world the man of color encounters difficulties in the development of his bodily schema. Consciousness of the body is solely a negating activity. It is a third-person consciousness. The body is surrounded by an atmosphere of certain uncertainty. I know that if I want to smoke, I shall have to reach out my right arm and take the pack of cigarettes lying at the other end of the table. The matches, however, are in the drawer on the left, and I shall have to lean back slightly. And all these movements are made not out of habit but out of implicit knowledge. A slow composition of my self as a body in the middle of a spatial and temporal world - such seems to be the schema. It does not impose itself on me; it is, rather, a definitive structuring of the self and of the world - definitive because it creates a real dialectic between my body and the world. n18

Bodily consciousness in Western societies, Oyeronke Oyewumi argues, is the bedrock on which the social order is founded. n19 The physical body is always in view and on view. n20 Just by looking at the physical body one discerns a person's beliefs and social position. The presence or absence of particular genitalia, skin pigmentation, cranium size - all are key to situating persons in Western social systems. n21

This is similar to the conflation argument Francisco Valdes makes when he points out how what he has identified as "Euro-American hetero-patriarchy... constructs sex as the determinant of gender, conceptualizes gender as the social dimension of sex, and treats sexual orientation as the sexual performance of gender." n22 According to Valdez, "persons born with penises are supposed to exhibit a particular social personality and persons born with vaginas another" so that "sex determines, and becomes conflated with, gender." n23 Additionally, "sex-derived gender" is conflated with sexual orientation - "sexual orientation signifies sexual personality; it is the sexual dimension of gender." n24

The work of both Oyewumi and Valdes underscores how the physical body is implicated in the construction of socio-political categories and epistemologies. Both express concern with how the physical is conflated with or embodies social differences.

Oyewumi additionally argues that the discourse of the body is prominent in the West because the West privileges the visual. n25

The reason that the body has so much presence in the West is that the world is primarily perceived by sight. The differentiation of human bodies in terms of sex, skin color, and cranium size is a testament to the powers attributed to "seeing." The gaze is an invitation to differentiate... The term "worldview," which is used in the West to sum up the cultural logic of a society, captures the West's privileging of the visual. n26

Within the black/white Pdigm the physical body is spectacular because it encodes social boundaries that are drawn on the basis of phenotypical and physiognomical differences. It is the black body that is the focus of stigma and devaluation and marginality. The white body, by contrast, is valorized and even celebrated with an endowment of presumptive rights.

Latineness poses unique challenges to the visuality and bodily consciousness of a Western society such as the United States. Skin color, hair texture and other obvious biological characteristics commonly used for conceptualizing, organizing and determining "race" are at best imperfect indicia of Latineness. In the American scheme of bipolarized racial ordering, Latino bodies are Pdoxically both black and white. Yet, Latineness is neither black nor white.

The fact of Latineness is that culture, rather than the physical body, is the site of difference and degeneracy, and thus the medium through which alternate (although co-existing) conceptions of "race" are constructed. As popularly understood, culture corresponds with nationhood and nationality. And for this reason it is not surprising that the nation-ness of the peoples of Latin America - no matter how distinct each is from the other - would be a constitutive element of a "Latino" race.

No doubt hegemonic imposition is a fact of Latineness. As Yen Le Espiritu's study of Asian Americans indicates, the process whereby linguistically, culturally and geographically diverse groups emerge as a unitary panethnic group is bound up with power relations. According to Espiritu, "a more powerful group seeks to subordinate another, and in so doing, imposes upon these people a categorical identity that is defined by reference to their inherent differences from or inferiority to the dominant group." n27 Anglos, the dominant group in the United States, commonly mark the racial inferiority of Latinos with measurements of English proficiency and the characteristics of "la familia" that are contrary to their notions of the nuclear family.

Once in place, however, the construct "Latino" becomes "an ontological condition of social life." n28 Regardless of the raw facts of their particular distinct histories, Mexicans, Puerto Ricans, Cubans and other peoples of Latin American descent who are present in the United States must locate themselves in relation to and make sense of their life experiences in light of widely promulgated and available

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often distorted) social narratives that essentialize them into a single identity category.

IV. Conclusion

Sandrino-Glasser’s inquiry into the "Latino" designation is a much needed one. It should serve as an important reminder that all identity designations are by-products of the different ways we are positioned by, and position ourselves within, the discourses of history, culture and society. Constructions of Latinoness (and blackness and whiteness) are rendered within socially and historically specific discourses that depend on the physical body as well as cultural practices to establish boundaries between "savagery" and "civilization."

On reading Los Confundidos, I thought long and hard about the "Latino" designation, the terms of its meaning, and its application. The next time my son poses the question "What does Latino mean?" my hope now is that I will have in my possession accurate, non-academic language to aid his understanding of the constraints and choices confronting us all as we are named and name ourselves as racialized beings.

FOOTNOTE-1:


n2. Id. at 159.


n6. Id. at 40-41 (emphasis in original).


n8. Id. at 215.

n9. See Takaki, supra note 5, at 36.

n10. Id. at 47.

n11. Id. at 47-48.
Identity, in Social Theory and the Politics of Identity 37,38 (Craig Calhoun ed., 1994). In their project to bring together narrative and identity in the interpretation of social action and social being, Somers and Gibson emphasize research findings that show that people are embedded in and guided by stories:

that people construct identities (however multiple and changing) by locating themselves or being located within a repertoire of emplotted stories; that "experience" is constituted through narratives; that people make sense of what has happened and is happening to them by attempting to assemble or in some way to integrate these happenings within one or more narratives; and that people are guided to act in certain ways, and not others, on the basis of the projections, expectations, and memories derived from a multiplicity but ultimately limited repertoire of available social, public, and cultural narratives.

Id. at 38-39.

n29. See Stuart Hall, Cultural Identity and Diaspora, in Identity, Community, Cultural Difference 225 (Jonathan Rutherford ed., 1990) (referring to identities as "the names we give to different ways we are positioned by, and position ourselves within, the narratives of the past.").
This section draws together seven selections that focus on issues of identity and group membership as related to the LatCrit enterprise. Because LatCrit is a fledging intellectual project, they are important in helping demarcate the boundaries of this field, which seeks to center Latinos in studies of the law's impact and to draw linkages to earlier scholarly projects like Critical Race Theory, Feminist Legal Theory, and Critical Legal Studies. I will use this brief introduction to say a few words about each piece and then to make some more general comments about the future of LatCrit scholarship.

The provocative essays by Leslie Espinoza n1 and Robert Chang n2 raise important questions for the LatCrit enterprise. Espinoza urges Latina/o legal academics to ask a self-critical question: will we have a positive impact, or merely be "a larger urban renewal project?" Chang invokes the icon of Tiger Woods to foreground the changing nature of racial identity. In so doing, he invites us to consider the generative role that asking new questions serves - even when we cannot provide easy "answers."

Both writing squarely as law professors, Kevin Johnson n3 and George Martinez n4 re-view the negative impact of legal classifications that bear heavily on Mexican Americans. Martinez reminds us that the law often formally reinscribes Mexican Americans as "white," even as American social practices and racial ideology "other" us as non-white. Martinez then applies his critique to a contemporary example of Black-Chicano conflict over the direction of the Dallas School District. He argues that a Black-Chicano coalition must be built, in part, on recognition of points of commonality in terms of historical segregation and discrimination against both African Americans and Mexican Americans.

Johnson's argument is similar in having as its focus the destructive power of legal definitions on a coalition. His focus is immigration law and, specifically, legal definitions of "citizen" and "alien." His inquiry turns to a different coalition, that between Chicanos and Mexicans in Los Angeles. His article is important for breaking the silence about the division between U.S.-born Mexican Americans and Mexican immigrants to this country, who often experience discrimination at the hands of individuals from the former group as well as the majority society. Johnson lays some important groundwork in describing the bases for Chicano hostility to Mexicans, including drawing powerfully from familial experiences. He closes the article by linking his analysis to the current debate over who should benefit from affirmative action in the educational context.

The final three articles in this section - written by Antonia Castaño, Maureen Ebben and Norma Guerra Gaier, n6 Maureen Ebben and Norma Guerra Gaier, n7 and Ana Novoa n8 - illustrate the transformative potential of inter-

Laura E. Gomez *


SUMMARY: ... This section draws together seven selections that focus on issues of identity and group membership as related to the LatCrit enterprise. ... The provocative essays by Leslie Espinoza and Robert Chang raise important questions for the LatCrit enterprise. ... These selections, like the entire volume, represent the promise of the fledgling field of LatCrit scholarship. At the same time, however, thinking about what ties them together provides an opportunity for exploring the more general contours of the LatCrit enterprise. ... (1) LatCrit scholarship seeks to place Latino/as at the center of legal scholarship. ... (2) At the same time, LatCrit scholars are wary of homogenizing varied experiences under a single "Latino" or "Hispanic" rubric. ... (3) At a related level, we must ask ourselves what is "critical" about the LatCrit project? I believe the answer has three components. First, LatCrit is a critical scholarship in refusing to see the law as internally consistent and fundamentally just. ... The second component of the "critical" in LatCrit may be openness to non-traditional legal scholarship. ... A related critical element is that LatCrit scholars see their agenda as both beyond law and beyond Latino interests. ...
disciplinary approaches to legal scholarship. Such research may lead us to see the law in new ways and, therefore, substantially alter the intellectual terrain. Novoa unearths the history of American family law as a way of pointing to its limits in capturing family forms that may be more prevalent among Latinos and that effectively discriminate against Latinos.

Ebben and Guerra Gaier use oral history interviews with three well-established Tejana lawyers (a judge, a law school administrator, and a public interest lawyer) to amplify themes about the intersection of racial and gender subordination. n9 This work takes on [*189] broader significance in the context of Latinas' stark under-representation in the bar, as they make up only one percent of Texas lawyers. While I might have taken a more critical approach to these women's often self-blaming and traditional accounts of their educational and career experiences (especially in the case of the judge), had I been the author, there is much to be gained from hearing their voices loud and clear.

Historian Antonia Castañeda's translation stories - that is, narratives by Mexicanas about their childhood experiences translating for their parents - are powerful instances of the tension between agency and structure in identity formation. On the agency side, the defiant voices of these girls and women penetrate the walls of class, racial, and linguistic exclusion that govern their lives as migrant farmworkers. On the other hand, those walls remain standing, seemingly impervious to social movements and other changes in late twentieth century American society. Castaneda's article provides many insights for those working or writing in the language rights and anti-discrimination areas.

These selections, like the entire volume, represent the promise of the fledgling field of LatCrit scholarship. At the same time, however, thinking about what ties them together provides an opportunity for exploring the more general contours of the LatCrit enterprise. n10 I would propose that we, as scholars seeking to define the LatCrit agenda, debate whether the three broad themes below capture the collective project in which we are engaged. n11

(1) LatCrit scholarship seeks to place Latino/as at the center of legal scholarship. In so doing, it challenges the traditional silence about the Latino experience with the American legal system. It also seeks to center, specifically, de jure and de facto legal discrimination against Latino/as.

[*190] (2) At the same time, LatCrit scholars are wary of homogenizing varied experiences under a single "Latino" or "Hispanic" rubric. Even as we embrace an expansive Latino political coalition and recognize points of shared history and contemporary experience, LatCrit scholars should seek to problematize pan-Latino identity. Specifically, we must continue to engage in unpacking differences among those we label "Latinos" in the United States. This involves sensitivity to differences related to such crucial factors as time of immigration/migration, country of origin, and different levels of bilingualism. We also must do more to document the differential access to legal services as well as experience of discrimination of Latinos of diverse social class locations.

Finally, LatCrit scholarship should be a forum where we explore racism and discrimination by Latinos toward other Latinos and members of other American racial groups. In other words, LatCrit can be a space where we confront racism that has, historically as well as currently, privileged Latinos who identify (or are identified by others) more as Spanish or European, to the disadvantage of those Latinos with more noticeable Indian or African ancestry. n12

(3) At a related level, we must ask ourselves what is "critical" about the LatCrit project? I believe the answer has three components. First, LatCrit is a critical scholarship in refusing to see the law as internally consistent and fundamentally just. We realize the law can be used to further just ends, but we are far from accepting this as inevitable. The second component of the "critical" in LatCrit may be openness to non-traditional legal scholarship. We intend to draw frequently on work from disciplines other than law, to transgress disciplinary boundaries, and to take up potentially empowering methods such as the narrative form and oral history. A related critical element is that LatCrit scholars see their agenda as both beyond law and beyond Latino interests. We support legal change as part of a [*191] broader agenda of social and political transformation. We seek the betterment of society for many who are disenfranchised and self-consciously seek coalitions with other racial minorities, white progressives, poor and working people of all races, and subordinated peoples worldwide.

The articles in this volume are sure to spark greater interest in this embryonic field. I hope they fuel informal conversations among law students, professors, and practitioners, as well as help shape the agenda for our next official gathering in May 1999.

FOOTNOTE-1:


n9. Although they do not frame their work in this way, Ebben and Guerra Gaier's work relates to a body of legal scholarship that explores the intersection between race, gender, and inequality. See Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139; Dorothy Roberts, Punishing Drug Addicts Who Have Babies: Women of Color, Equality and The Right of Privacy, 104 Harv. L. Rev. 1419 (1991); Cheryl Harris, Finding Sojourner's Truth: Race, Gender and the Institution of Property, 18 Cardozo L. Rev. 309 (1997). This literature has focused almost exclusively on comparisons between Black and white women, so perhaps this article will lead others to see value in exploring intersectionality in the lives of Latinas.


n12. Two recent publications have confirmed prior studies' findings that lighter-skinned, less-Indian looking Latinos are more accepted by whites' and generally experience less discrimination. See Leonard M. Baynes, If It's Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness?: An Investigation and Analysis of the Color Hierarchy, 75 Denv. U. L. Rev. 131 (1997); Richard L. Zweigenhaft and G. William Domhoff, Diversity in the Power Elite: Have Women and Minorities Reached the Top? (1998).
In May 1997, I attended the LatCrit II Symposium held in St. Mary's University Law School and participated in a panel discussion concerning the oppression of Latina/os. When we, as "outsider" scholars, talk about identity it is important to remember that we begin with a self-aware and self-proclaimed identity as "oppressed." All of the panelists acknowledged the master's power to construct identity. The race markers, and the lines they draw between the powerful and the oppressed, are not solely imposed by the dominant society. These roles are understood as being components of the identity "Latino/a." Whether phobia of homosexuality or worshipful imposition of female domesticity, our Latino/a identity binds us and breaks us. Likewise, we are a culture of immigrant identity. The immigration discourse reinforces an immigrant identity that simultaneously blinds us from claiming our status as the colonized. Despite the way our identity and the markers of our identity shift and change, we find that the identity of being oppressed is operational and real - even when we are blind to it.

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In May 1997, I attended the LatCrit II Symposium held in St. Mary's University Law School and participated in a panel discussion concerning the oppression of Latina/os. There were two main themes that linked the presentations of this panel. The first theme is that of identity. When we, as "outsider" scholars, talk about identity it is important to remember that we begin with a self-aware and self-proclaimed identity as "oppressed." Be it intuition or analysis, this recognition that we belong to a group that is linked, is our foundational identity. The group may not have clearly defined parameters, we may not agree on all identifying criteria, yet we have a commitment that we belong. We are aware that we live in the "Master's House." 

The other side of oppression is liberation. That day's panel discussion had a second theme, an optimistic theme - that of change. However, we are challenged in our hopefulness not only by the pervasiveness of oppression, but also by the way our efforts for change always seem to boomerang back to us. We live in the master's house; the master defines our realities - and our possibilities. We confront the problem of how to use the master's tools to dismantle the master's house. We try to work ourselves out of this bind. We take what we have and try to fashion new tools, little tools that are not exactly the master's tools. Whether reformists or revolutionaries, we recognize that we are trying to dismantle something. We are trying to change. Nonetheless, I continue to have this sense that we dismantle the master's house thinking that we are moving ahead, only to find that we are part of a much larger urban renewal project that the master has in mind. Painful as it is, we need to articulate our perceptions of futility and the seeming intractability of racist oppression.

All of the panelists acknowledged the master's power to construct identity. This power is not exercised solely as an external force. We cooperate in the construction of our oppressed identities. Margaret Montoya spoke of hegemony. Hegemony is about rule. One way to rule is by coercion. However, there is a more powerful way to rule. If one wants to rule over the long term, it is crucial to obtain the consent of the ruled. We try to work ourselves out of this bind. We take what we have and try to fashion new tools, little tools that are not exactly the master's tools. Whether reformists or revolutionaries, we recognize that we are trying to dismantle something. We are trying to change. Nonetheless, I continue to have this sense that we dismantle the master's house thinking that we are moving ahead, only to find that we are part of a much larger urban renewal project that the master has in mind. Painful as it is, we need to articulate our perceptions of futility and the seeming intractability of racist oppression.

The dominant society acts in two ways to obtain our consent. First, the dominant class will distribute goods to us to get us to cooperate. We are given a stake in the system, even if our interest is marginal. Second, the dominant class creates a discourse of domination. This results in the mental attitude of the subordinate class that being ruled is natural. We develop a consciousness that is the consciousness of oppressed people. We are fearful of disrupting the system of domination because we might lose the little that we have, and we cannot conceive of ourselves as empowered.

Racist oppression has the horrific beauty of masterful, hegemonic domination. LatCrit theory and LatCrit II panelists force us to explicate racism's intractability. Racism is intractable because it is unknowable. What
is race? Certainly, it is about color. Color lines are imposed by the dominant society. They are also imposed, as Kevin Johnson noted, within the communities of the oppressed. We know race is about color, but then, it is not always about color. LatCrit theory reveals the exceptions that course through all RaceCrit theory. LatCrits know that racism is also about language differences and suppressions. However, within the dominant discourse, racism is not always about language differences. Race markers vary from color to language to national origin to culture, including religion, food and apparel.

The race markers, and the lines they draw between the powerful and the oppressed, are not solely imposed by the dominant society. We consent to being ruled. We contribute to our own oppressions. We integrate racist/language differentiations in our own communities. Latino/as define ourselves by language and we divide ourselves by language. In Mexican American communities there is a word for Mexican Americans who have lost their language. They are "Pochos." Likewise, as Ana Novoa points out, our culture is one where there are strongly genderized roles and sexualities. These roles are understood as being components of the identity "Latino/a." Whether phobia of homosexuality or worshipful imposition of female domesticity, our Latino/a identity binds us and breaks us. It gives us power and it subverts us. Likewise, we are a culture of immigrant identity. We both embrace and scorn this identity. Im [*195] migration issues bring Latino/as together as a community and immigration issues fracture us as a community. The immigration discourse not only fractures us, but also breaks us in a way that keeps any piece from seeing the whole. The immigration discourse reinforces an immigrant identity that simultaneously blinds us from claiming our status as the colonized. It is our Southwestern Aztlan that has been overrun by Anglos. Latinos/as are not the interlopers; we are the indigenous mix.

Despite the way our identity and the markers of our identity shift and change, we find that the identity of being oppressed is operational and real - even when we are blind to it. Racism is an effective system of oppression because every time we try to put our hand on it, it escapes us. But it never goes away. The politics of hegemony are particularly troublesome for those who try to catch, to name racism. Who are we, the theorists? We are law professors. We are comfortably in the master's house about to eat some of the master's food. People of color traditionally experience the double consciousness of seeing the world as the master does and as the servant does. n3 Our consciousness is again split. We have become part of the dominant society by virtue of our status as law professors. We live a shifting persona that has many masks. We go in and out of multiple roles, as teachers in our own schools, as scholars in critical communities, as activists and as family members.

There are very few places that we do not feel "dis"integrated. We find comfort in this group of scholars because we share the experience of multiple consciousnesses and maskings. The problem is that we only have a few places where we can be integrated. We are all here to reconstruct ourselves in ways that are healthy. Yet, even as we warm to this project, I am finding a new division within this group. I have experienced a generational division. I feel that it is between law professors hired within eight to ten year eras. As we talked about what occurs in law schools during the conference, I had to sit back and listen. I had not understood how much of my own consciousness had been captured by fear. It is not only a fear for my survival in the institution, and my own psychic survival, but also my fear for our young, outsider, critical colleagues. I am worried that their new ways of dismantling the master's house are going to undermine them. But, I have no special patent on effective methods of liberation. Indeed, with each challenge, I am recommitted to critiquing my own way of viewing the world. Fear is not an effective way to change.

[*196] What is an effective way to change? Can we change the hegemonic oppression? In his book, Race Matters, Cornell West offers an insight on survival. n4 Nihilism is the road to destruction. When we stop caring about anything, when we feel there is no future, when we have no hope, this is the dead end. How do we keep our will to struggle? I found, in the presentations at this conference, a commitment to narrative. Narrative presents an opportunity to share and to reconstruct our shattered selves. We can use narratives, or tales of our worlds, and ourselves to transform our ways of thinking about ourselves. Every time we tell a tale that is subversive, we suddenly find out that we are both liberated and entrapped. We can bring change by understanding that we will always be part of the divided and dominated world and that we will always have our survival strategies that subtly undermine the oppression. I will end with three thoughts. The first is that we must bring faith to our work. We must have faith to act against oppression. Second, we need hope. Without hope, we have no vision. Lastly and most importantly, we should bring an unabashed, unashamed notion of love to our work. We do not want to lose the love and the caring that motivates us to work for liberation.

FOOTNOTE-1:

n2. Audre Lorde, Sister Outsider 110-11 (1984) ("What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow perimeters of change are possible and allowable.")


The racial identity of people of color, including Latinas and Latinos, must be viewed from at least two vantage-points. First, we must consider identity formation at the individual level, namely how a person engages in the difficult process of constructing his or her personal identity. n1 Second, as critical Latino theory has begun to do for Latinos, racially subordinated people should analyze the construction of group identity. n2 This essay examines the relationship between immigration and Latino group identity. n3

[*198] Immigration continuously and constantly transforms the "Latino community." Due to the immigration of persons from Latin America, the Latino population in the United States is growing by leaps and bounds. A 1997 Census Bureau report projected that by the year 2005, because of immigration and high fertility rates, Latinos will surpass African-Americans as the largest minority group in the United States, constituting about one-fourth of the total U.S. population. n4

The complexities of the immigration dynamic for Latinos are often ignored. With the development of a transnational labor force, n5 migration occurs back-and-forth between the United States and Mexico. n6 Many in the United States, however, focus exclusively on migration to this country. n7 The fluidity impacts the building of group solidarity, thereby affecting the ability to sustain successful political action. In addition, intergenerational changes occur as Latin American immigrants have children who are U.S. citizens with different life experiences and different identities. Adding another layer of complexity, national origin allegiances, linked to the country of origin of Latino immigrants or their ancestors, at times have hindered the building of a pan-Latino identity. n8 These com

[*199] plexities, all directly or indirectly attributable to immigration, affect Latino group identity.

Put simply, the Latino community in the United States is far from static. Great changes in the demographics of Latinos occurred during the second half of the twentieth century. Dominant society, and Latinos themselves, have not fully grasped the implications of these demographic changes. The effect of these changes on group identity and intra-Latino relations warrants our consideration.
I. Immigration and Intra-Latino Conflict

Immigration occasionally has contributed to intergroup and intragroup conflict. Conflict between Latinos and African-Americans has been studied and at various times has been sensationalized by the media. For example, in a well-known Atlantic Monthly article, Jack Miles contends that employers in Los Angeles prefer docile Mexican immigrants over African-Americans. Similarly, heavy press coverage has focused on Cuban/African-American conflict in Miami and African-American/Central-American tensions in the Washington, D.C. metropolitan area.

While intergroup hostility receives attention, intragroup conflict between immigrants from Mexico and the established Mexican-American community in the United States is generally ignored. Such tension, however, is almost inevitable in light of the immigration and the ongoing diversification of the Latino community. Moreover, the unequal distribution of legal rights among Latinos contributes to the tensions. Many laws, for example, distinguish between Latinos based on immigration status. Latino noncitizens can be deported while Latino citizens cannot. Similarly, Congress' 1996 welfare reform barred certain legal immigrants from participating in federal benefits programs, which disproportionately impacts Mexican immigrants who naturalize at lower rates than other immigrant groups.

The Supreme Court has sanctioned legal distinctions made between Latino immigrants and citizens. In Espinoza v. Farah Manufacturing Co., the Supreme Court held that Title VII of the Civil Rights Act of 1964 did not prohibit discrimination on the basis of alienage status, even though it barred discrimination based on race and national origin. In so doing, the Court affirmed dismissal of the claim of Cecilia Espinoza, a lawful permanent resident from Mexico married to a U.S. citizen. Similarly, in Mathews v. Diaz, a case brought by Cuban noncitizens lawfully in this country, the Supreme Court rejected an equal protection challenge to a federal law denying federal medical benefits to certain legal immigrants.

In considering tensions between groups, we should look at how society, as well as the law, treats them. Both affect the formation of Latino group identity. Status competition may pit Latino sub-groups against one another. Laws may reinforce the social distinctions made by the groups. Latinos should recognize the arbitrariness of treating immigrants and citizens differently under the law. Like the imaginary geographical line that the United States government declares as "the border" between the United States and Mexico, this discrimination serves as a metaphoric border between people of Latin American ancestry. It divides a community with members who have much in common, including dominant society's classification of the entire group as "foreigners" to the United States.

A. Intra-Latino Conflict In Los Angeles

Consider the impact of immigration on the Latino community in Los Angeles. Central American immigration has resulted in the much-publicized tensions between Central Americans, Koreans, and African-Americans in South Central Los Angeles. Intra-Latino conflict, specifically the conflict between Mexican immigrants and Mexican-Americans in East Los Angeles, has received far less attention. The animosity between these groups can only be understood in light of the larger historical context and, more importantly, the status of Mexican-Americans in this nation's social hierarchy.

1. Hostility Between Mexican-Americans and Mexican Immigrants

Divisions exist in the Mexican-American community on the issue of immigration. To state the obvious, not all (and perhaps not many) Mexican-Americans favor open borders with Mexico. Indeed, about 25% of Latino voters, all citizens who are more-or-less integrated into the political community, supported California's now infamous Proposition 187 which bars undocumented persons from receiving public benefits. Such restrictionist sentiments make it uncertain where undocumented Mexican immigrants fit into the broader Latino community. This uncertainty has historically been a difficult issue for Chicano activists. For example, in attempting to organize farmworkers, Cesar Chavez and the United Farm Workers struggled to establish a principled position on undocumented Mexican immigrants because, while agricultural growers hired them to break strikes, undocumented Mexican immigrants formed the core of the union's membership.

Many Mexican-Americans, who as a group are racialized by Anglo society, desire to restrict immigration because of the distinctions that they make between themselves and Mexican immigrants. A prominent example of this phenomenon can be seen in East Los Angeles, a well-established Mexican-American community that was the site of Chicano activism in the 1960s, which has experienced a steady stream of Mexican immigrants during the last part of this century.
accompanied by the growth of anti-immigrant sentiment among Mexican-Americans in the area. Some have claimed Mexican immigrants are too poor, that too many live in the same home (causing property values to decline), and that the increase in Spanish-speaking children in the schools implies the education of non-Spanish-speaking children. Some Mexican-Americans, whose parents were barred from speaking Spanish when they were in school, have changed Catholic services so that they can attend masses conducted in English, not Spanish. One young Mexican-American's explanation of the differences between Mexican-Americans and Mexican immigrants in another southwestern city sheds some light on the tensions in East Los Angeles: "It's not that we hate them or anything... It's just that we don't have anything in common with them. I don't speak Spanish. I don't listen to their music. We just come from different worlds." n27

Sentiments like these have had a palpable impact on Latino lives. Mexican-Americans reportedly have threatened to call the Immigration and Naturalization Service on Mexican immigrants, whom they, at times, refer to as "wetbacks." Mike Contreras, a second generation Mexican-American, admits to yelling "'turn down that wetback music'" to any newcomer blaring ranchera (Mexican country) music. n28 Some Mexican-Americans speak of Mexican immigrants over-consuming public benefits and express fear about losing jobs to cheap immigrant labor. At the same time that dominant society accuses Mexican-Americans of not assimilating into the mainstream, some Mexican-Americans claim that the new Mexican immigrants fail to assimilate.

Mexican immigrants, not surprisingly, tell very different stories. The immigrants say, "Mexican-Americans think they are 'superior' to us. We are willing to work hard while 'Americans' are not." The immigrants criticize Mexican-Americans for speaking poor Spanish, for being traitors to their heritage, and having coddled childhoods; in effect, they are "pochos." n30 One Mexican immigrant in Los Angeles claimed to have developed friendships with Anglos and African-Americans rather than Mexican-Americans who denigrated Mexican immigrants as "wetbacks" and "beaners." n31

As this demonstrates, Mexican-Americans and Mexican immigrants at some level have different group identities and speak with different "voices." n32 This comes as no surprise considering the two groups' different experiences and social positions in the United States. Besides differences in class and immigration status, many new Mexican immigrants in the 1990s have more indigenous features and dark complexions that render them less able to assimilate than fair-complexioned Latinos.

The drawing of distinctions between Mexican-Americans and Mexican immigrants is nothing new or unique to East Los Angeles. For example, Mary Helen Ponce in her childhood autobiography Hoyt Street told of growing up in a Mexican-American community in a post-World War II Los Angeles suburb. Her brothers and sisters called their extended family who immigrated from Mexico "Los Whats" because when they came to this country the only English they knew was "what?" though they quickly learned to speak English. n33

Similarly, in the film Lone Star, Mercedes Cruz, a Mexican-American living in a Texas border town, heartlessly calls up "La Migra" (the Immigration & Naturalization Service) to report undocumented Mexicans crossing her land. n34 She scolds Mexican workers in her restaurant for speaking Spanish and tells them that they should speak English in America. Near the end of the movie, we learn through a flashback that Cruz herself crossed the border without papers. Her true colors ultimately become apparent when she helps a young undocumented Mexican woman in dire need.

My own grandmother, a Mexican-American, occasionally referred to undocumented Mexicans as "Julios" or "wetbacks." n35 For her, it was important to clearly distinguish between herself and undocumented Mexicans for class and status reasons. A mythical Spanish past constituted part of her effort to assimilate into the mainstream. n36 She and my mother identified themselves as Spanish, French, and just about "anything but Mexican." n37

2. Causes of the Conflict

Tensions between Mexican-Americans and Mexican immigrants are rooted in class and social status. Class differences between the established Mexican-American and Mexican immigrant communities are exacerbated by the poor rural roots of many Mexican immigrants.

Moreover, the tension in part reflects Mexican-American adoption of dominant society's racial attitudes and values. Despite claims to the contrary, all immigrant groups assimilate to some degree, even if dominant society refuses to extend them full membership in society. n38 Some assimilation inevitably results from extended immersion in a different culture. Part of immigrant efforts to assimilate may include the adoption of the dominant society's racism. Unfortunately, this is the case for some Latinos.
As one observer noted, "discrimination and racist behavior generally are [processes] by which one racial group seeks to produce esteem for itself by lowering the status of the other group... Status comes about by disPging others, by asserting and reinforcing a claim to superior social rank." n39 This sort of status-seeking is particularly acute for immigrants:

Newly arrived immigrants unable to speak the dominant language have often lost whatever status they enjoyed in their homeland, while their reason for having left is often to gain a higher status than was possible in their homeland. During this time of high status mobility, many immigrants engage in high levels of discrimination. Status competition explains the tension that often exists between different minority groups as each new group seeks to establish its place in the social hierarchy. n40

[*206] As Gunnar Myrdal observed, "the development of prejudice against Negroes [is] usually one of [the] first lessons in Americanization for [new immigrants residing in the North]. Because they are of low status, they like to have a group like the Negroes to which they can be superior." n41

Hostility between Mexican immigrants and Mexican-Americans reflects competition for the scarce resource of social status. n42 As one political scientist explained, ""what happens is the assimilated people feel embarrassed by the poverty and rural ways of the immigrants. Mexican-Americans want to fit into the American culture and do not want to be associated with immigrants." n43 Mexican-Americans in essence seek placement at a higher rung of the social ladder than Mexican immigrants. In attempting to attain that goal, they distinguish between themselves and Mexican immigrants in ways remarkably similar to how Anglos distinguish between themselves and Mexican-Americans. n44 This suggests that in certain circumstances Mexican-Americans may side with dominant society, not other racially subordinated peoples. n45

Mexican-Americans should be conscious of the causes of their conflict with Mexican immigrants. Division between people of Mexican ancestry perpetuates the status quo. Rather than fight amongst themselves, Latinos should fight racial subordination of Latinos, as well as of all people. Racism doesn't recognize the distinctions between Mexican-Americans and Mexican immigrants. To dominant society, a "foreigner" is a "foreigner." n46

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B. Latinos, Immigration, Affirmative Action

As we have seen, the law makes distinctions between Latinos, especially between citizens and noncitizens. Another sort of possible intragroup conflict concerns the largely unexplored question of Latino immigrant eligibility for affirmative action programs. n47 To state the question in concrete terms: Should a fifth generation Mexican-American from East Los Angeles be treated the same as a Mexican immigrant in affirmative action programs used in university admissions? Is there a difference between an immigrant who was a well-to-do elite in his native country and a U.S. citizen from more modest means?

For the most part, difficult questions like these have gone unexplored. Paul Brest, Peter Schuck, and others suggest that Latino immigrants might not deserve the benefits of affirmative action. n48 Christopher Edley, however, has taken the position that Black immigrants should be included in affirmative action programs because of racism against African-Americans in the United States. n49 Latino legal commentators have not weighed in on the debate.

The answer to this difficult question must rest in part on the underlying rationale for affirmative action in education. n50 If the goal is [*208] to achieve a diverse student body, then Latino immigrants should be eligible because they add diversity, as that concept traditionally has been understood. n51 A variation of this rationale is the role model theory, which posits that minorities in positions of authority will serve as positive role models for other minorities. n52 Latino immigrants may well serve this function, assuming that Latino citizens see themselves as part of the same social group as Latino immigrants.

Suppose, however, that the primary rationale for affirmative action is to remedy past discrimination. n53 The ancestors of Latino immigrants were not enslaved (like African-Americans) and did not suffer a long history of segregation and other forms of discrimination (like Mexican-Americans, Puerto Ricans, and other Latinos) in this country. However, may have suffered the impacts of xenophobia in the United States as well as harms in their native lands due to U.S. foreign policy. n54 Affirmative action might offset some of the disadvantages imposed on them by such wrongs.

This essay takes no position on the important question of immigrant eligibility for affirmative action.
However, the issue needs to be addressed. If Latinos fail to analyze the intricacies of affirmative action and the intragroup tensions that a close analysis reveals, we can be sure that others with different perspectives and aims will.

C. Summary

Intragroup tensions between persons of Mexican ancestry have legal and non-legal implications. Latino insights and perspectives are needed for evaluating these issues, which will have an important impact on the Latino community. Latino group identity, as well as the lives of individual Latinos, will be affected.

II. Latino Transformation Through Immigration

The shifting sands of Latino group identity pose difficult challenges. Despite Latino diversity, there are some commonalties to the Latino experience in the United States. Language, culture, religion, and physical appearance (to some degree) are common among many, though not all, Latinos.

Importantly, the perceptions of the outside world, which often fail to recognize Latino diversity by homogenizing all "Hispanics," are important to group identity. Amy Gutmann has recognized for African-Americans "the involuntary nature of group identity." Similarly, society has assigned Mexican-Americans, especially in the Southwest, a racialized group identity. This ties into the broader Latino-as-foreigner phenomenon - that Latinos are treated as foreigners to the United States no matter how long they or their ancestors have lived in this country - discussed extensively at the First Annual LatCrit conference.

The law at various times has recognized society's treatment of Latinos as a group. For example, in Hernandez v. Texas, the Supreme Court, in holding that the systematic exclusion of Mexican-Americans from juries violated the equal protection clause, observed that the petitioner's initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class... distinct from "whites." One method by which this may be demonstrated is by showing the attitude of the community. Here the testimony of responsible officials and citizens contained the admission that residents of the community distinguished between "white" and "Mexican." The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend segregated schools for the first four grades. At least one restaurant in town prominently displayed a sign announcing "No Mexicans Served." On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked "Colored Men" and "Hombres Aqui" ("Men Here").

As Hernandez illustrates, the formation of a group identity is affected by the putative group's treatment by dominant society. The signs said "No Mexicans Served," not "No Undocumented Mexicans Served" or "No Mexican Immigrants" served. Put differently, as Professor George Martinez demonstrated in his review of the Mexican-American litigation experience, dominant Anglo society has imposed an identity on both Mexican-Americans and Mexican immigrants as outsiders to the national community.

This common mistreatment may forge group cohesion among Latinos so that they may fight a common enemy and agitate for group rights.

In focusing on common ground, Latinos must not forget how immigration is transforming the Latino community. Community leaders seeking to promote social change must be attuned to the changes. New civil rights issues emerge with immigration. For example, to avoid repetition of events like those that occurred in May 1992 in South Central Los Angeles that deeply affected a new and growing Central American population, Latino activist groups must do a better job of representing the interests of the entire Latino community.

Similarly, California has seen increasing immigration of Mixtecs, indigenous peoples from Mexico, who speak a language other than Spanish. Spurned by other Mexican immigrants, the Mixtecs face modes of exploitation different from Mexican-Americans and other Mexican immigrants. Finally, there has been significant Mexican migration to the Midwest in recent years. A growing number of Midwestern Mexican immigrants are employed in lines of work, such as meat packing, different from the agricul tural work that many Mexican immigrants have traditionally found in the Southwest. These Midwestern Mexican immigrants almost inevitably will face different issues, problems, and challenges than Mexican-Americans in other regions. Latino leaders must be vigilant of these sorts of demographic shifts if they want to promote positive social change.

III. Conclusion

Latinos must begin the process of interrogating Latino group identity.
immigration and the dynamic impact that it has on the Latino community and Latino group identity must be explored. One area worthy of attention is the adoption of dominant society's racial sensibilities, which are reflected in Mexican-American/Mexican immigrant conflict. Competition for status in a deeply stratified society has pernicious effects, namely dividing Latinos. The legal distinctions made between Latino citizens and noncitizens, including those that affirmative action programs might make, may cause tension between Latino sub-groups. Besides analyzing these issues, we should try to build on Latino commonalties and avoid fragmentation of various Latino sub-groups in the fight for social justice.

FOOTNOTE-1:


n5. See Rachel F. Moran, Foreword - Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond, 8 La Raza L.J. 1, 18-23 (1995) (analyzing transnational identity of many Latinos who immigrated to United States because of need for cheap labor); Enid Trucios-Haynes, LatCrit Theory and International Civil and Political Rights: The Role of Transnational Identity and Migration, 28 U. Miami Inter-Am. L. Rev. 293 (1996-97)
discussing the significance of transnational identity of many Latinos).

n6. See Belinda I. Reyes, Public Policy Inst. of Cal., Dynamics of Immigration: Return Migration to Western Mexico (1997) (studying return migration from United States to Mexico by Mexican nationals).

n7. When politicians present estimates of the Mexican immigrant population in the United States, they often fail to account for return migration to Mexico and thus overstate the immigrant population in this country. See Sam Dillon, U.S.-Mexico Study Sees Exaggeration of Migration Data, N.Y. Times, Aug. 31, 1997, at A1 (quoting demographer Frank D. Bean); see also Binational Study, Migration Between the United States and Mexico (1997) (pre-publication copy) (on file with author) (estimating the population of Mexican-born persons living in United States and studying U.S./Mexico migration).

n8. See Rodolfo O. de la Garza, et al., Latino Voices 39 (1992) (reporting that survey data revealed that Latinos were more likely to self-identify in national origin terms, such as Mexican-American, Chicano, Puerto Rican, or Cuban, than to use pan-ethnic identifiers such as Latino, Hispanic, or Spanish American); see also Max J. Castro, Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans, 2 Harv. Latino L. Rev. 179 (1997) (analyzing place of Cuban-Americans, with their unique historical and immigration experience, in greater Latino community).


n15. See Connie Chang, Comment, Immigrants Under the New Welfare Law: A Call for Uniformity, A Call For Justice, 45 UCLA L. Rev. 205 (1997) (analyzing legal challenges to the denial of public benefits to lawful permanent residents under the Personal Responsibility and

n16. See U.S. Dep't of Justice, Annual Report, 1995 Stat. Y.B. I.N.S. 137 (Mar. 1997) (Table M) (showing naturalization rates by country of birth for immigrants admitted in fiscal year 1977 with Mexican citizens at 22.2%, well below the 45.9% average for all immigrants).


n19. See Johnson, Civil Rights and Immigration, supra note 14, at 64-65; see also Tomas Rivera Policy Institute & Nat'l Ass'n of Latino Elected and Appointed Officials Educational Fund, Constructing the Los Angeles Area Latino Mosaic (1997) (presenting demographic data on Guatemalan and Salvadoran immigrants in Los Angeles). Part of the tension is economic in nature. Bill Hing, however, rebuts the assertion that African-Americans lose jobs to immigrants. See Bill Ong Hing, To Be an American: Cultural Pluralism and the Rhetoric of Assimilation 44-145 (1997) (reviewing various claims that immigrants have negative economic impacts on the nation). The animosity toward Latino immigrants in South Central Los Angeles is ironic in light of the fact that, in the late 1980s and 1990s, the bottom fell out of the greater Los Angeles real estate market, except in South Central Los Angeles where Latino immigrant demand for housing stabilized prices. See Jesus Sanchez, Living the Dream: While the Real Estate Market Around Most of the Southland is Suffering, Latino Immigrants are Snapping Up Houses in South Los Angeles and Prices are Stable, L.A. Times, Sept. 24, 1995, at D1.


n22. See Johnson, supra note 14, at 83-89.


n25. See Sonia Nazario, Natives, Newcomers at Odds in East L.A., L.A. Times, Mar. 4, 1996, at A1; see also Johnson, Latino Legal Scholarship, supra note 14, at 107-08 & n.21 (analyzing how East Los Angeles generally is invisible in public discourse, except when the media reports about crime and racial conflict). Similar tensions between new immigrants from Mexico and the established Mexican-American community have been reported in Phoenix, Arizona. See Robbie Sherwood, Civil Rights Violations

Indeed, David Gutierrez, the author of an important book analyzing the impact of Mexican immigration on Mexican-Americans in the United States, became interested in the subject because of his experiences growing up in East Los Angeles. He saw first-hand the "almost comical love/hate relationships between U.S.-born Mexican Americans and more recent immigrants from Mexico." Gutierrez, supra note 20, at 2.


n27. See AmPno & Shaffer, supra note 25 (emphasis added) (quoting a Mexican-American high school student in Phoenix, Arizona).

n28. See Nazario, supra note 25 (quoting Contreras).


n30. See Richard Delgado, Rodrigo's Fourteenth Chronicle: American Apocalypse, 32 Harv. C.R.-C.L. L. Rev. 275, 299 & n.115 (1997) (mentioning that "pocho" is slang for a person of Mexican ancestry "who does not speak Spanish and has lost touch with his or her roots").


n35. See also Gutierrez, supra note 20, at 3 (stating that "it was not at all unusual to hear my grandfather (whose father immigrated to the United States from the Yucatan at the turn of the century) lambasting wetbacks").

n37. I borrow the phrase from Acuna, supra note 11.

n38. See Johnson, supra note 36, at 1281-86 (analyzing Latino assimilation and socially-imposed limits on Mexican-American assimilation); see also Hing, supra note 9, at 877 (observing that, although Latinos often are accused as not assimilating, Spanish-speaking immigrants generally learn English).


n40. Id. at 1055-56 (footnotes omitted).

n41. Gunnar Myrdal, The American Dilemma 603 (1944); see also Joe R. Feagin, Racial and Ethnic Relations 376 (1978) (“Open and violent interethnic conflict has been a crucial current in American history. Earlier immigrant groups have regularly attempted to subordinate later groups.”).


n43. See AmPno & Shaffer, supra note 25, at A1 (quoting Louis DeSipio, political science professor at University of Illinois).

n44. See Arriola, supra note 34, at 252 (discussing immigrants' internalization of dominant society’s values).

n45. See Delgado, supra note 30, at 298-99 (articulating similar concerns).

n46. See Johnson, Latino Legal Scholarship, supra note 14, at 117-29 (analyzing the significance of Latino-as-

foreigner phenomenon to Latino experience in U.S.); see also infra text accompanying notes 55-65 (analyzing the significance of society's classification of Latinos as a monolithic group).

n47. Of course, this discussion assumes the future existence of affirmative action, which is not currently the case in the Fifth Circuit's jurisdiction or the University of California system. See Hopwood v. Texas, 78 F.3d 932 (5th Cir.) (holding that affirmative action by the University of Texas in law school admissions violated the Fourteenth Amendment), cert. denied sub nom., 116 S. Ct. 2580 (1996); Jeffrey B. Wolff, Affirmative Action in College and Graduate School Admissions, 50 SMU L. Rev. 627, 654-57 (1997) (summarizing the events surrounding the decision by the Regents of the University of California to abolish affirmative action in student admissions).

I acknowledge that affirmative action is not without flaws. For the argument that affirmative action proponents should consider broader challenges to selection processes in education, see Susan Sturm & Lani Guinier, Rethinking the Process of Classification and Evaluation: The Future of Affirmative Action: Reclaiming the Innovative Ideal, 84 Cal. L. Rev. 953 (1996).

(stating that Latinos and immigrants should not be eligible for affirmative action).

n49. See Christopher Edley, Jr., Not All Black and White 174 (1996).

n50. See Brest & Oshige, supra note 48, at 862-72 (reviewing various rationales for affirmative action in education).


n56. Appiah & Gutmann, supra note 3, at 168 (emphasis added).

n57. For some recent examples, see Cordova v. State Farm Ins. Co., 124 F.3d 1145, 1147 (9th Cir. 1997) (addressing Title VII case in which defendant's employee referred to another employee as a """"dumb Mexican""""); California Dept. of Corrections v. State Personnel Bd., 59 Cal. App. 4th 131, 137 (1997) (deciding a wrongful termination case in which an Anglo correctional officer upset over the promotion of a Hispanic woman told her that """"I am tired of this Hispanic shit; us white guys are tired of being looked over"""" and later shook her by the shirt lapel). See also Rivera v. Domino's Pizza, Inc. 1996 U.S. Dist. LEXIS 1351, at *3-4 (E.D. Pa. Feb. 9, 1996) (denying an employer's summary judgment motion in which a Puerto Rican employee was called a """"Mexican tamale,"""" a """"dumb Puerto Rican and a dumb Mexican").

n58. See Johnson, Latino Legal Scholarship, supra note 14, at 117-29. For the proceedings of the conference, see Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 Harv. Latino L. Rev. 1 (1997).


n60. Hernandez, 347 U.S. at 479-80 (footnote omitted).


n64. See generally Carol Zabin et al., A New Cycle of Poverty: Mixtec Migrants in California Agriculture (Cal. Inst. Rural
Studies 1993) (studying the plight of Mixtecs in California agriculture).


Latinos will soon become the largest minority group in the United States. African-Americans may therefore be about to give up political clout to Latinos. This prospect has generated tension between African-Americans and Latinos. Given this background, it is important for Critical Race Theory and Latino Critical Theory to consider the matter of the African-American/Latino relationship. With this in mind, I would like to discuss two important questions posed by the organizers of this panel: (1) How is the relationship between African-Americans and Latinos affected by the construction of race? and (2) Can Critical Race Theory benefit by a consideration of the race or racialization of Latinos? In light of these questions, in Part II, I argue that the construction of race impacts the relationship between African-Americans and Latinos. Specifically, the legal construction of Mexican-Americans as white has generated tensions that form a barrier to coalition building between African-Americans and Latinos. I contend that Mexican-Americans should embrace a non-white identity to facilitate coalition building with African-Americans. In Part III, I argue that Critical Race Theory can benefit from considering the racialization of Latinos. Indeed, I contend that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos. As a result, I call for an epistemic coalition comprised of all minority groups so that each group achieves knowledge about themselves and their place in the world.

II. How is the relationship between African-Americans and Latinos affected by the construction of race?

I want to focus on the example of Mexican-Americans. Mexican-Americans have been legally classified as white. That legal classification impacts the relationship between African-Americans and Mexican-Americans. It creates a barrier to coalitions with African-Americans and other non-white minorities.

An example from Dallas, Texas is instructive. In the City of Dallas, there are currently major battles...
between African-Americans and Mexican-Americans over the direction of the Dallas School District. In connection with this conflict, African-Americans have recently expressed resentment toward Mexican-Americans. The resentment is expressed as follows: Mexican-Americans have been free riders. African-Americans fight for civil rights; Mexican-Americans ride their coat tails and share in the benefits.

This resentment has been significantly linked to the legal construction of Mexican-Americans as white. Recently, some African-American leaders in Dallas have argued that Mexican-Americans should not share in the benefits or gains achieved by African-Americans because Mexican-Americans have been legally classified as white. Thus, the relationship between African-Americans and Mexican-Americans is impacted by the construction of race. The legal designation of Mexican-Americans as white raises a barrier to coalition building between African-Americans and Mexican-Americans.

In order to help build a coalition between African-Americans and Mexican-Americans, it makes sense for Mexican-Americans to reject their legal designation as white. Although white identity has been a traditional source of privilege and protection, Mexican-Americans did not receive the usual benefits of whiteness. Mexican-Americans experienced segregation in schools and neighborhoods. Moreover, in non-legal discourse, Mexican-Americans have been categorized as irreducibly Other and non-white.

Critical Race Theory can be enhanced by considering the racialization of Latinos. First, as discussed above, to the extent that Critical Race Theory reconsiders the legal designation of Mexican-Americans, Critical Race Theory can strengthen its own position by helping to create a stronger coalition with Latinos and Latino Critical Scholars. Second, to the extent that Critical Race Theory considers the racialization of Latinos, it can become more comprehensive and closer to the truth. In so doing, Critical Race Theory can help eliminate certain misunderstandings that generate tensions between African-Americans and Latinos.

For example, Critical Race Theory could help correct the free-rider misunderstanding previously mentioned - i.e., that African Americans fight for civil rights; Mexican Americans ride their coat tails. If Critical Race Theory were to consider Latinos, it would discover that Latinos have waged a long and rigorous battle for civil rights. Mexican-Americans, for example, have been litigating school segregation of Latinos since 1930. Indeed, two Mexican-American school desegregation cases - Westminster School Dist. v. Mendez and Gonzalez v. Sheely - specifically foreshadowed the reasoning and the result in the 1954 landmark case of Brown v. Board of Education.

III. Can Critical Race Theory Benefit or Be Enhanced By a Consideration of the Race or Racialization of Latinos?

Critical Race Theory can be enhanced by considering the racialization of Latinos. First, as discussed above, to the extent that Critical Race Theory reconsiders the legal designation of Mexican-Americans, Critical Race Theory can strengthen its own position by helping to create a stronger coalition with Latinos and Latino Critical Scholars. Second, to the extent that Critical Race Theory considers the racialization of Latinos, it can become more comprehensive and closer to the truth. In so doing, Critical Race Theory can help eliminate certain misunderstandings that generate tensions between African-Americans and Latinos.

For example, Critical Race Theory could help correct the free-rider misunderstanding previously mentioned - i.e., that African Americans fight for civil rights; Mexican Americans ride their coat tails. If Critical Race Theory were to consider Latinos, it would discover that Latinos have waged a long and rigorous battle for civil rights. Mexican-Americans, for example, have been litigating school segregation of Latinos since 1930. Indeed, two Mexican-American school desegregation cases - Westminster School Dist. v. Mendez and Gonzalez v. Sheely - specifically foreshadowed the reasoning and the result in the 1954 landmark case of Brown v. Board of Education.

Given all of this, it does not make sense for Mexican-Americans to retain the legal designation of white. If Mexican-Americans embraced a non-white legal identity, then Mexican-Americans and African-Americans would be able to build a better relationship.

It is pointless for Latinos and African-Americans to divide themselves over the issue of Latino "whiteness." Indeed, to preserve the current racial hierarchy, mainstream white society often attempts to create divisions among minority groups. Given this, Latinos and African-Americans must work together as a coalition in order to dismantle racial subordination. By rejecting the legal designation of white, Latinos would be taking a step toward building such a coalition.
Similarly, in Gonzalez v. Sheely, Mexican-Americans sued officials of the Tolleson, Arizona Elementary School District. The court found that defendants had segregated Mexican-American school children into one school attended solely by Mexican-Americans. n26 Following the reasoning of Mendez, the court held that this segregation violated plaintiffs' Fourteenth Amendment rights. n27 In reaching its conclusion, the Gonzalez court anticipated the reasoning in Brown by recognizing that segregation placed a stamp of inferiority on Mexican-Americans. n28 In Brown, of course, the Supreme Court observed that segregation creates enduring feelings of inferiority in children "that may affect their hearts and minds in a way unlikely ever to be undone." n29 The Gonzalez court's conclusion that segregation generated a feeling of inferiority in Mexican-Americans is also highly significant for its rejection of the notion in Plessy that legally compelled segregation did not stamp minorities with a badge of inferiority. n30 Thus, the case law developed by Mexican-Americans in their efforts to desegregate schools provided strong precedential support for the reasoning and the holding in Brown.

Critical Race Theory can benefit from considering the racialization of Latinos in other ways as well. Such consideration can provide further evidence to support the claims of Critical Race Theory. The insights of Critical Race Theory are not specific to African-Americans. These insights can also be applied to Latinos. n31 For example, one of the leading Critical Race Theory insights is that race is socially constructed. n32 By considering how the courts constructed the race of Latinos, it is possible to develop more evidentiary support for the Critical Race Theory claim that race is socially constructed.

Take, for example, the legal construction of Mexican-Americans as white. n33 The case law on this point provides powerful support for the Critical Race Theory insight that race is socially constructed. In In re Rodriguez, n34 an immigration case, a Texas federal court addressed the question of whether Mexicans were white. At that time, the federal naturalization laws required that an alien be white in order to become a citizen of the United States. n35 There, the court stated that from an anthropological perspective, Mexicans would probably be considered non-white. n36 The court noted, however, that the United States had entered into certain treaties with Mexico, and that those treaties expressly allowed Mexicans to become citizens of the United States. Under these circumstances, the court concluded that Congress intended that Mexicans were entitled to become citizens. Thus, the court held that Mexicans were white within the meaning of the naturalization laws. In re Rodriguez provides compelling support for the Critical Race Theory claim that race is socially constructed. It clearly reveals how racial categories can be constructed through the social or political process. Through the give and take of treaty making, Mexicans became white.

Consider another example. Critical Race theorists have argued that the law has recognized racial group identity when such identity was a basis for subordination. n37 They contend, however, that the law often has failed to recognize group identity when asserted by racial minorities as a means for establishing rights. n38 Thus, dominant-group-controlled institutions often have defined racial groups and have imposed those definitions onto some groups as a way to maintain the status quo - i.e., racial subordination. Again, consideration of the case law involving Latinos provides compelling support for this Critical Race Theory argument. For example, in Hernandez v. State, n39 a Mexican-American had been convicted of murder. He sought to reverse his conviction on the ground that Mexican-Americans had been excluded from the grand jury and the petit jury. n40 The court held that Mexican-Americans are white people, and therefore, fall within the classification of the white race for purposes of the Fourteenth Amendment. n41 Since the juries that indicted and convicted the defendant were composed of members of his race - white persons - he had not been denied equal protection of the laws. n42 Thus, in Hernandez, Mexican-Americans sought to assert a group identity - the status of being a distinct group - in an effort to resist oppression - i.e., being excluded from juries. The Texas court refused to recognize their group identity. Instead, the Texas court imposed a definition of "white" on Mexican-Americans so as to maintain the status quo - i.e., exclusion from juries. Given this, a consideration of the racialization of Latinos provides important support for the critical race theory insight that courts often define racial groups in ways that maintain racial subordination.

Some of the participants at the LatCrit II Conference seemed to suggest that Latino Critical Theory poses a threat to Critical Race Theory or the interests of African-Americans. They suggested that a consideration of the racialization of Latinos may dilute the claims of African-Americans or undermine the claim of African-American exceptionalism - i.e., that the African-American experience is somehow unique and exceptional.
In response to these concerns, it seems that the following may be said. It is inevitable that Critical Race Theory must consider the racialization of Latinos. Currently, there is a world-wide movement - the Politics of Recognition and Multiculturalism - which generates the demand to consider Latinos. Today's political discourse often involves the "demand for recognition." n43 One leading philosopher, Charles Taylor, ties the "demand for recognition" to a person's notion of their identity. n44 The idea is that one's identity is partially determined "by recognition or ... misrecognition of others." n45 Thus, people can be harmed if the community reflects back to them a disapproving image of themselves. n46 "Nonrecognition or misrecognition," then, "can be a form of oppression." n47 Proper recognition, then, is an essential requirement for human beings. n48 Given this demand for recognition, Critical Race Theory must recognize Latinos and consider how Latinos have been racialized.

This does not require that the interests of African-Americans be marginalized. Indeed, I believe that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos and other groups. According to philosopher W.V.O. Quine's holism, "the truth of any one statement or proposition is a function not of its relationship to the world but of the degree to which it 'hangs together' with everything else we take to be true." n49 Thus, for Quine, it is incorrect to talk about the meaning of a single statement. n50 It is therefore, incorrect to talk about the truth of a statement separate and apart from other propositions in the web of belief. n51 Hence, we cannot talk about the truth of statements about African-Americans in isolation from propositions about Latinos within the web of belief. We cannot ascertain the truth about African-Americans without considering propositions regarding the racialization of Latinos. As Ludwig Wittgenstein explained, the world "waxes and wanes as a whole." n52

Quine's holism provides powerful support for the importance of establishing a coalition to combat the epistemic violence that has been practiced against minority groups. Scholars of western colonialism have emphasized the importance of the generation of knowledge - i.e., the writings and discourses of the white colonizers on the non-white Others - that justified the subordination of such Others. n53 The production of such knowledge has been termed "epistemic violence." n54 The Quinean insight - that the truth about the various minority groups (Latinos, Asian-Americans, Native Americans and African-Americans) cannot be ascertained without considering propositions about the various groups - means that minority groups must develop an epistemic coalition to learn the truth about themselves in order to fight against epistemic violence. Each group must contribute to that effort. They must develop knowledge about themselves. Only by considering the knowledge developed about each group will it be possible to learn the truth about any one racialized group.

Thus, minority groups must establish more than coalitions to achieve political results. Latinos, African-Americans, Asian-Americans and Native Americans must establish an epistemic coalition to achieve knowledge about themselves and their place in the world.

IV. Conclusion

Latinos will soon become the largest minority group in the United States. This prospect has generated tensions between Latinos and African-Americans. Given this, I have suggested that Critical Race Theory and Latino Critical Theory must consider the matter of African-American/Latino relations. In this regard, I have argued that the relationship between African-Americans and Latinos is affected by the construction of race. In particular, the legal construction of Mexican-Americans as white has generated tensions that form a barrier to coalition building. As a result, I have suggested that Mexican-Americans should embrace a non-white identity to better enable coalition building with African-Americans. I have also argued that Critical Race Theory can benefit by considering the racialization of Latinos. Indeed, I have contended that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos. In so doing, I have called for minorities to establish an epistemic coalition to achieve knowledge about themselves and their place in the world.

FOOTNOTE-1:


n2. See Richard Estrada, Don't Ignore Black-Hispanic Tensions, Dallas Morning News, Dec. 8, 1995 at 31A; Piatt, supra note 1, at 4-12.

n3. Critical Race Theory has sought to provide new oppositionist accounts of race. See Critical Race Theory: The Cutting Edge (Richard Delgado ed., 1995); Critical Race Theory: The Key Writings That Formed the Movement xiii (Kimberle...


n7. See Cheryl Harris, Whiteness as Property, 106 Harv. L. Rev. 1709, 1721 (1993); see also Stephanie M. Wildman & Adrienne D. Davis, Language and Silence: Making Systems of Privilege Visible, 35 Santa Clara L. Rev. 881, 894 (1995) (defining white privilege as "an invisible package of une earned assets").

n8. See Martinez, The Legal Construction of Race, supra note 5, at 336.

n9. See Richard Delgado, Rodrigo's Twelfth Chronicle: The Problem of the Shanty, 85 Geo. L.J. 179, 673 (1997) ("school authorities sent Mexican kids to schools that were different from - and inferior to - the ones attended by Anglo children"); Martinez, Legal Indeterminacy,

n10. See Martinez, The Legal Construction of Race, supra note 5, at 336.

n11. See id. at 342.

n12. J. Moore, Mexican-Americans 1 (1970). See also Rodolfo Acuña, Occupied America: The Chicano's Struggle Toward Liberation 7 (1972) ("Anglo-Americans arriving in the Southwest believed they were racially superior to the swarthy Mexicans, whom they considered a mongrel race of Indian halfbreeds"); Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers within the Rural Economy, 26 N.M. L. Rev. 9, 9 (1996) ("The Mexican 'peon'... is a poverty-stricken, ignorant, primitive creature, with strong muscles and with just enough brains to obey orders and produce profits under competent direction.") (quoting Lothrop Stoddard, Re-Forging America: The Story of Our Nationhood 214 (1927)).

n13. My discussion has focused on Mexican-Americans. My conclusion, however, is consistent with Bill Piatt's position that, in general, Hispanics should embrace a non-white identity. See Piatt, supra note 1, at 159.


n15. See Piatt, supra note 1, at 156 (calling for African-American/Latino cooperation); Kevin R. Johnson, Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century, 8 La Raza L.J. 42, 66 (1995) (calling for a broad-based "rainbow coalition").

n16. See generally, Martinez, Legal Indeterminacy, supra note 4. One of the reasons that the history of Latino civil rights litigation is generally unknown is because of Latino invisibility. Latino Critical Legal theorists have observed that Latinos have been rendered invisible: Latinos are "Los Olvidados" or the "Forgotten Ones." See, e.g., Kevin R. Johnson, Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement, BYU L. Rev. 1139 (1993); Christopher David Ruiz Cameron, How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving Speak English Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy, 85 Cal. L. Rev. 1347 (1997).

n17. See Martinez, Legal Indeterminacy, supra note 4, at 574-602. The first case to decide the question of whether segregation of Mexican-Americans was permissible was Independent School District v. Salvatierra, 33 S.W.2d 790 (Tex. Civ. App. 1930), cert. denied, 284 U.S. 580 (1931).

n18. 161 F.2d 774 (9th Cir. 1947).


n20. 347 U.S. 483 (1954). See also Derrick Bell, Race, Racism and American Law 544 (3d ed. 1992) ("As with other landmark cases, the Supreme Court's 1954 decision in Brown v. Board of Education has taken on a life of its own, with meaning and significance beyond its facts and perhaps greater than its rationale").


n22. 161 F.2d at 776.


n24. 161 F.2d at 780-81.

n25. Id. at 780.

n26. 96 F. Supp. at 1006.

n27. Id. at 1005.

n28. Id. at 1007.

n29. 347 U.S. at 494.

n30. See Plessy, 163 U.S. at 551 (“If segregation makes minorities feel inferior, it is not because of anything found in the act, but solely because the colored race chooses to put that construction on it”); Martinez, Legal Indeterminacy, supra note 4, at 579-80.

n31. See, e.g., Johnson, Los Olvidados, supra note 16 (applying critical race theory to Latino immigration issues); Martinez, The Legal Construction of Race, supra note 5 (applying insights of critical race theory to the question of how legal actors constructed the race of Mexican-Americans).

n32. See, e.g., Martinez, The Legal Construction of Race, supra note 5.

n33. Id. at 7.

n34. In re Rodriguez, 81 F. 337, 338-55 (W.D. Texas 1897).

n35. See Johnson, Racial Restrictions on Naturalization, supra note 5, at 143 (stating that from 1790 to 1952 only white immigrants could naturalize as citizens).

n36. In re Rodriguez, 81 F. at 349.


n38. See Harris, supra note 7, at 1761.


n40. Id. at 535.

n41. Id.
April 1997 marked the 50th anniversary of Jackie Robinson breaking the color barrier in major league baseball. While I was mourning the fact that so little progress had been made in 50 years, the mainstream media was celebrating it as an important moment in the nation's narrative of racial progress. It was, in some ways, a bittersweet remembrance as the nation was forced to recall the dark days of racial segregation. But the pain or guilt is softened because those dark days are represented in grainy, black and white newreels, relegated to the safety of the past.

The past is then contrasted with the present where sports, at least on the playing field and with the exception of ice hockey, represents one of our most highly integrated institutions. As an aside, I might ask, why sports and the military are two of the most highly integrated institutions in this country? Of course, there are some pockets of resistance - golf comes to mind. But even there, we have the nice coincidence of Tiger Woods' spectacular victory at the Master's, celebrated as another breach of the color barrier. We see then that even in the highly discriminatory world of golf, hard work and merit are the keys to success. Tiger Woods, like Jackie Robinson, didn't engage in the discourse of victimhood, they didn't ask for affirmative action. Instead, through their exceptionalism, they overcame. So when Jackie Robinson and Tiger Woods are held up as role models, what exactly are we being told? I am reminded of the way Asian Americans and Cuban Americans have been constructed as model minorities. And so other minorities and poor whites are told to be like us - if they don't succeed, it's their fault. They should stop engaging in the discourse of victimhood. Nothing is said, though, of the discursive formation known as the "innocent white male."

Although I am not much into spectator sports, I am fascinated by the way sports is represented as a democratic institution where you are limited only by the extent of your abilities (read: content of your character). Sports represent a key component in our nation's narrative of racial progress. Sports becomes a model of how racial progress has been achieved through a system of merit. How does this affect our efforts to preserve affirmative action? Why isn't education like sports? How do we resist the nation's false narrative of racial progress that makes our efforts to overcome racial subordination more difficult?...
How does this affect our efforts to preserve affirmative action? Why isn't education like sports? How do we resist the nation's false narrative of racial progress that makes our efforts to overcome racial subordination more difficult?

Instead, we see different communities struggling over the body of Tiger Woods. n11 Is he African-American? Asian-American? Thai? Chinese? Native American? Why have certain communities become so invested in his racial affiliation or identity? What is to be gained? Should we let him "just be who he is" as he has requested? As a multi-racial figure, does he represent the deracinated national body? n12 Is the multi-racial Tiger Woods the anti-racist hero of the next millenium? n13

Tiger Woods forces us to ask the "race" question, in a similar way that Latinas/os may open up the space for a discussion of race. Remember - Latinas/os may be of any race. n14 The fear is that multi-racial figures like Tiger Woods and the any-race figures of Latina/os are complicating the already-overburdened racial taxonomy in the United States. This fear may account for the apparent conflict between "those advocating... for official recognition of multiracialism on the Census who] are largely multiracial persons, parents in interracial unions who advocate on behalf of their mixed-race children, and multiracial advocacy organizations" whereas "those opposed to such changes are largely representatives of traditional civil rights groups." n15 How are we to negotiate this tension? Are we ready to have such a discussion?

[*226] But ready or not, multi-racial persons and Latina/os are here (and have actually been here for a long time). Fear about the complexity of the discussion should not make us shy away from the tough questions. As we explore the tough questions, we should get a few things straight. It would be naïve to believe that multiracialism operates solely in the realm of the descriptive. Like any other racial "descriptor," it is always already political. By this, I mean no more and no less than that there are no literal White, Black, etc., persons. If our racial categories are not naturally existing phenomena, then these categories have been created or constructed by human agents and human institutions through specific and diffuse enactments of power. I suppose that it is possible to imagine a world where "race" might simply be a descriptor without having the sort of political and material effects that it has in our world. However, this would require a different history, one that has yet to be written or lived.

Within our imperfect world, multiracialism may come to embody a new race-neutral position. It is neutral to race because it does not ask what your "component" races are; all it asks is that you be mixed. Christine Hickman notes that a multiracial category might include:

- Thirty to seventy percent of all African Americans...
- The majority of Native Americans...
- Virtually all Latinos.
- Virtually all Filipinos.
- A significant portion of Whites... n16

Multiracialism may constitute a new iteration of color-blindness where color will not matter because (most) everyone will be full of color. If careful attention is not paid to the political consequences of the multiracial category as it is constructed, it may become even more difficult to see and name the ongoing material impact of race on people's lives.

LatCrit scholarship is in a unique position to examine questions of multiracialism. LatCrit Theory explores and emphasizes a Latina/o subject position. The fact that Latina/os may be of any race, including mixed race, makes the issue of Latina/o identity central to the project. Much work has already been done in a very short time, n17 but the issue of Latina/o identity remains contested. n18

[*227] Earlier, I asked if Tiger Woods is the anti-racist hero of the next millenium. I do not know, n19 but a critical Latina/o theory will help us to answer this question.

FOOTNOTE-1:


n2. See Claire Smith, On Baseball: Jackie Robinson-50 Years, A Baseball Celebration; Color Issue Reaches People in Seats, N.Y. Times, Apr. 10, 1997, at B11. It is interesting to note that there was a limited amount of racial integration in the early days of baseball. See Celebrating the End of Segregated Baseball: The Flaw in the Diamonds, The Economist, Jan. 18, 1997, at 81 ("black Americans played alongside whites during the sport's pioneering era in the mid 1800s, but the
tentative integration of those early days changed into a rigid colour barrier that lasted from the late 1880s until... 1947"). However, several researchers disagree with the rigid color barrier assertion. For accounts of Latinos who made it into the major leagues before Jackie Robinson did in 1947, see Roberto Rodriguez, Before Canseco: Early History of Latinos in Baseball Full of Hits and Runs Around the Colorline, Black Issues in Higher Educ., Apr. 18, 1996, available in 1996 WL 15575662; Roberto Rodriguez & Patrisia Gonzales, Latino Influence in Baseball Evident in Negro and Major Leagues, Fresno Bee, June 17, 1996, at B5; Mal Florence, The Inside Track, Barkley Has Own Take on Tiger Phenomenon, L.A. Times, May 28, 1997, at C2.

n3. The past was also memorialized in a feature-length film made a few years after Jackie Robinson broke the color barrier. See The Jackie Robinson Story (Alfred E. Green 1950). The film begins with the following quote: "This is the story of a boy and his dream, but more than that, it is the story of an American boy and a dream that is truly American." Id.


n5. See Jerelyn Eddings, Tiger's Triumph, America's Gain, U.S. News & World Rep., Apr. 28, 1997, at 8. This article celebrates the coming together of different races in the name of excellence.


n7. See Steve Wulf, The Lion and the Tiger: A Golfer Teaches Us a Lesson We Should Have Learned 50 Years Ago from a Baseball Player, Time, Apr. 28, 1997, at 86 (contending that sports is the common ground to unite the different races).


n10. See supra note 6. See also The Jackie Robinson Story, supra note 3 (in the closing scene, the voiceover states: "Yes, this is the Jackie Robinson story. But it is not his story alone, not his victory alone. It is one that each of us shares, a story, a victory that can only happen in a country that is truly free, a country where every child has the opportunity to become president or play baseball for the Brooklyn Dodgers."). Gerald Early, Jackie Robinson and the Hollywood Integration Film, in Jackie Robinson: Between the Baselines 99, 100-01 (Glenn Stout & Dick Johnson eds., 1997) (asserting that Robinson was credited for integrating baseball, a sport that holds "tremendous cultural and mythological significance in American life.").

n11. See Janet Strudwick Smith, Am I Black, White or In Between, Ebony, Oct. 1995, at 14. Tiger Woods was criticized by the some of the Black community for claiming to be "90 percent Oriental, more Thai than anything." Id.


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**SUMMARY:** ... "<qmarkx>Que dice? <qmarkx> Que
dice?" ... "<qmarkx>Que dice? <qmarkx> Que dice?"
... "<qmarkx>Que dice? <qmarkx> Que dice?" my
mother asks. ... "<qmarkx>Que dice? <qmarkx> Que
dice?" my mother asked. ... Who are these children
who speak in tongues and live in fire? What happens to
them as they move through the educational system -
the system of which most of us are products, the
system to which we send our children, the system that
employs us, the system that does violence to our
mental integration, and the system that historically has
also done violence to our physical selves precisely
because we spoke languages other than English?
Although many Chicano/Latino children are pushed
out of the public educational system in places like
Texas and California, they and all children in the
United States are steeped in lessons about rugged
individualism, democracy, "American" nationalism,
equality, justice, merit, and fair play. ... Catholic
missionaries and the Euro-American educational
system went to great lengths to "denaturalize or
deculturalize" native peoples through their children: in
missions, in the case of the Jesuits and Franciscans,
and in Indian boarding schools, in the case of Euro-
American educators. ...

[*229]  

"Dile que no puedo respirar - que se me atora el aire.
Dile..." How do I say "atora"?

"Tell your mother that she has to stop and place this
hose in her mouth and press this pump or else she will
suffocate."

"<qmarkx>Que dice? <qmarkx> Que dice?"

He is sitting behind this big desk, and my mother was
sitting beside me and holding onto my hand very
tightly.

I...what does suffocate mean? How do I translate this?
I don't have the words.

"<qmarkx>Que dice? <qmarkx> Que dice?"

"I.....uh.....Dice que...uh....Dice que si no haces lo que
te dice te mueres."

"Dile que cuando me acuesto por la noche que no
puedo resollar." "Resollar," what does that mean?

Her gasps came out quickly and sounded so awful: a
croaking sound that seemed to hurt from deep inside
her throat. I sit in front of the big desk remembering,
hearing her sounds, and feel again the terror of last
night and every time I heard her and could not help. I
do not have the words to help her. She will die. And all
I could do was sit there and hold her hand and listen to
her gasp and gasp for air - for breath that would not
reach her, her eyes popping out - and [*230] watch
her die. She called me her lengua, her voz. If she dies,
it would be my fault.

I tell the doctor she cannot breathe and will die. And
he says something I cannot understand about
asthmatics and how there is little he can do except give
her this pump and that I should be sure to tell her not to
panic.

Panic. What does that word mean? How do I say
panic?

How does a seven-year-old girl, not yet in the second
grade, translate the life and death words "atora,
"suffocate," "resollar," "panic?" How does she explain
and interpret words she does not know in either
language, while knowing at the same time that her
mother's life sits on her tongue and on what she does
with the words given her? Where in her seven-year-old knowledge does she find the meaning of words that hold the life or death of the mother who calls her "mi lengua" - her tongue - the fleshy, movable organ attached to the floor of the mouth with which words are made? What cultural rites are these in which children become adults long before puberty?

Age 8: La cuenta

"Dile que no le podemos pagar toda la cuenta porque ha llovido mucho y no hemos podido pizar. Pero que aqui estan estos centavitos y luego luego se la pagamos tan pronto que trabajemos... y que queremos llevar una poca comida hoy - que si nos extiende el credito un poquito. Andale, dile."  

He looks at me from behind his counter and says, "What? What'd she say?"

"My mother said we can't pay all the bill today - because of the rain we have not been able to work and we will pay the rest real soon, as soon as we work...and can we have a little more food on credit?"

He looks at me, than he looks at her, and we stand there in front of him. He starts to say something I cannot hear.

"<qmarkx>Que dice? <qmarkx> Que dice?" my mother asks. "Andale, dile que si le pagamos - nomas que ahorita no hay trabajo."

I start to speak to him again. I look up to talk to him, and he stares down at me, and the look I see in his eyes tells me that he does not believe we will pay our bill. I have seen that same look on people's faces in town when we all get out of the back of the truck by the city park, and me and my friends walk down the street - in Toppenish - the people just stare at us and glare at us with eyes that tell us we do not belong there. It is the same look the man at the restaurant gave us - at that place where we stopped on our way from Texas - when he wouldn't sell us milk for the baby's bottle.

"<qmarkx>Que dice? <qmarkx> Que dice?" my mother asked.

[*231] "Nada mama. No dice nada. Mejor vamonos. No nos van a dar mas credito."

What cultural issues are at stake for child translators? How do they interpret for themselves the cultures they must translate for their parents - the culture that assaults and violates them, their families, and their communities with its assumptions and attitudes about them as well as with its language and other lethal weapons?

Age 15: El rifle

"Ay tocan a la puerta. Trae rifle. Ha de ser uno de esos gringos que cazan faisanes. Anda ver que quiere."

I open the door to a man with a hunting rifle.

"Does Raaool Valhenzoola live here? Is he here? I want to talk to him."

"<qmarkx>Que dice? <qmarkx> Que dice?" "<qmarkx>A quien busca? <qmarkx>Busca a Raul?"

"Si mama, busca a Raul. Quedate adentro. No, my brother's not home. He's working."

"Well, you tell your brother that I came here to order him to stay away from my daughter. You tell him I catch him anywhere near Janice, or even lookin' at her, he'll be sorry. You tell him I have friends, and they know who he is. You tell 'im, girlie, you tell "im."

I look past him, past the lingering swirls of dust his truck tires had stirred up on the dirt road, and know what the people in the camp meant when they told us stories about the Texas Rangers.

"<qmarkx>Que dice? <qmarkx> Que dice?" "<qmarkx>Que quiere con Raul?" my mother cries from somewhere behind me.

I tell him to put the rifle down because he is scaring my mother and to please leave. I step back inside the house and close the door. What can I tell her that she doesn't already know?

Who are these children who speak in tongues and live in fire? What happens to them as they move through the educational system - the system of which most of us are products, the system to which we send our children, the system that employs us, the system that does violence to our mental integration, and the system that historically has also done violence to our physical selves precisely [*232] because we spoke languages other than English? n2 Although many Chicano/Latino children are pushed out of the public educational system in places like Texas and California, they and all children in the United States are steeped in lessons about rugged individualism, democracy, "American" nationalism, equality, justice, merit, and fair play. What do children of color, children of farmworker families, and other working-class children, whose daily experiences belie the national myths, understand and know about these myths?
If we are to decolonize national myths, we must understand how different people have lived the American myths: the historical myths about inventing America that refer to invasion as discovery (as Angela Davis noted during her keynote address at the Translating Cultures conference held in Santa Barbara in 1992) and the ideological myths that sustain U.S. imperialism, genocide, racialism, and economic exploitation and have done so since the founding of this nation. These myths, and the attitudes and the violence they foster, are intrinsic to the political, economic, social, and cultural values of the United States and are the toxic particles that we ingest with every breath.

These myths include the notion that the United States, symbolized by "The West," is a classless, casteless society where equality and justice for all reign supreme, where merit and hard work are rewarded, and where education - which is free and available to all children - is the key to success. Certainly children are vitally aware of the popular heroes and heroines of the western frontier, including every white-hatted cowboy who ever rode a horse across the vast expanses of the silver screen, dispensing evenhanded justice with his faithful but rather dumb - sometimes ethnic - sidekick and greeted by a blonde beauty at the end of the dusty trail.

Those of us living in California know firsthand how deeply rooted and pervasive are the national myths surrounding the "frontier" and "The American West." Not only is California the most romanticized, mythologized, and distorted of the western states, but the West and how the West was spun, who spun it, how it is now being spun, and who is authorized to spin it, are among the most highly contested issues in the ideological - euphemistically called cultural - wars now being waged on battlefields across the nation: newspapers, popular magazines, academic journals, conferences, public school textbooks, the National Museum of American Art, and the National Museum of American History.

These wars are about national myths, about ideology and who controls it. They are about "The West as America" - to use the title of the bitterly contested exhibit at the National Museum of American Art, site of one of the most acrimonious battles waged during the cultural wars of 1991.

What is the relationship between those myths and the politics of translating cultures? What rites of passage are those that require children to conceive the significance of, construe, and interpret entire cultural universes for adults, universes that include every possible human experience: from a nation's mythology and ideology, a sibling's arrest, pregnancy and post-natal care, an argument with a boss who refuses to pay the wages he agreed to pay? What rites are these in which childhood's boundaries are transgressed each time a child is required to translate - and thus mediate, negotiate, and broker adult realities across cultures?

These questions are guiding my current research on a social history of Tejana farmworkers. How did Tejana farmworkers and their families who migrated between Texas and the state of Washington live this nation's national myths? Based on interviews with women who lived in five labor camps in different parts of Washington State, this work examines the lives of Tejanas who came of age during the two decades after the Second World War, from about 1945 to 1965.

These were the decades of the Bracero Program, which recruited more than 4.5 million Mexican men to work in agriculture and industry in the western/southwestern United States, and of Operation Wetback, which in 1954 alone deported a million "aliens." These were the decades of aggressive anti-immigrant sentiments, expressed in national efforts such as the McCarran-Walter Act, which aimed to tighten immigration laws and to intensify the screening and deporting of "aliens."

The calls for immigrant labor coincided with the economic booms that began with the First World War and accompanied all major wars in this century. Anti-immigrant laws and waves of deportations were symptoms of the economic downturns that inevitably followed. The first laws restricting immigration were enacted in 1922, after the end of the First World War. In 1930-33, during the Great Depression, three hundred thousand Mexicans and Mexican Americans were forcibly "repatriated" to Mexico; in 1953-54, Operation Wetback deported more than twice the number of Mexicans contracted under the Bracero Program during the same period.

These were the decades in which New Deal spending and subsidies to agriculture - including the building of monumental dams - provided agribusiness with cheap water for irrigation and electric power. Irrigation transformed arid western wastelands into verdant, fertile agricultural valleys with undulating fields of row crops, fruit orchards, and hop yards endlessly stretching out under liquid blue skies. Twentieth-century agricultural corporations required massive armies of seasonal, mobile manual labor, which they obtained not only through the public recruitment of braceros from Mexico but also through the private recruitment of Mexicano/Chicano families, especially from isolated rural communities of South Texas where racism, segregated schools, the hated rinches, and "no Mexicans or dogs allowed" signs at the front doors of restaurants were the norm.
During these decades, entire Tejano families, both nuclear and extended, began an annual migrant work cycle from Texas, to Arizona, to California, to Washington, to Oregon, to Idaho, and back to Texas. The children of these South Texas communities, where earlier generations of native-born children had often been refused even rudimentary education in English because the town had "no school for Mexicans," were the girls and boys who scrambled onto the beds of tarp-covered flatbed trucks to migrate to las piscas, to live in labor camps, and to labor alongside their parents, older siblings, and other relatives in the row, field, and orchard crops of the Yakima, Skagit, and Wenatchee valleys. Some of these families settled out early on and, in the late 1940s and early 1950s, began to form the nucleus of Chicano communities in the Pacific Northwest.

Most of the families lived in labor camps - some of which had communal showers, outside toilets, and communal laundries that consisted of large steel tubs with built-in washboards; others had neither showers nor laundries. Located at the end of long dusty roads or set far beyond groves or trees that hid the ramshackle structures from view, the labor camps were not visible from the highway. Thus the camps, and their inhabitants, were rendered invisible to the local citizenry. Ostensibly, migrant farmworkers did not exist.

What existed instead were inflammatory newspaper headlines, which decried the threat "illegal Mexican aliens" posed to local resources, and McCarthyism and anticommunist hysteria, which denounced as subversive and/or homosexual anyone even remotely suspected of harboring radical political sympathies and posing an internal threat to national security. Historically defined as racial, sexual, and political threats, people of color were now at even greater risk. What also existed were Hollywood's countless renditions of the West as America, which Chicano, Amerindian, Black, and Anglo children could see on Saturday afternoons at the segregated Liberty Theater in Toppenish, Washington - the heart of the Yakima Indian Reservation. Above all, what existed were the myths.

Thus, for people of Mexican descent, whose historical communities had existed under a state of siege since the end of the U.S. war with Mexico in 1848, the repressive politics, policies, and culture of the 1950s were a postwar manifestation of historical pattern of repression, now further justified by nativist as well as racist arguments that Mexicans were foreigners. For the migrant farmworker families of the Tejanas interviewed for this study, the "keep America pure" ideology, the economic and political policy of containment, and the cultural and political repression of the 1950s conveyed the clear message that people of Mexican descent were un-American, subversive, and unwelcome.

During these decades, the women whose stories begin and end this chapter translated for their families and their communities. During the decade of the 1950s, in particular, Cold War politics and the gender, racial, class, and sexual politics of containment further converted these women of color - and, in fact, all people of color - into "the enemy within."

As children, the women I interviewed translated for parents, family, and community, and the question of how they experienced the national myths is a critical political, and thus cultural, question. Their oral histories reveal that the act of translation is informed by unequal power relationships. Translation usually occurs under conditions of conflict and stress. It is frequently traumatic, and the trauma is long-lasting. Children are often at the center of the process of translation, and they experience that trauma more strongly than adults. What, then, do we make of children translating cultures? How do we assess, analyze, theorize, and interpret this experience, which in most cases continues into their own adulthood and generally until their parents' death?

The current body of knowledge and literature on translation privileges the written word. It largely focuses on the translation of written texts, principally all genres of literature, or seeks to teach businesses how to train workers to be translators and thus to digest "unassimilated diversity," to quote Angela Davis again. It yields little of value for examining and understanding the experience of child translators.

Recently, social-science scholars and practitioners - particularly linguists, psychologists, anthropologists, and social workers - have begun to examine and debate issues pertinent to children as translators. Generally, however, these scholars have cast the experience as a recent phenomenon specific to immigrant children and their families. They have centered the debate on the psychological of linguistic "costs and benefits" to the individual child.

One side argues that translating for parents and family is harmful to the child's psychological development and that, because children play an adult role while they are translating, they may grow up too quickly and resent or lose respect for their parents. This perspective is exemplified by Richard Rodriguez's undernourished Hunger of Memory: The Education of Richard Rodriguez. Rodriguez accepted and internalized the tenets of a racist, classist society that deemed everything about him - the color of his skin,
his language, his physiognomy, and his working-class origins - wrong, unacceptable, and un-American. He internalized these notions and relinquished his Mexican self, choosing education over family, erudite English over Spanish, a "public" Euro-American life over a "pri vate" Mexican one. In rejecting his Mexican self, Rodriguez has, in fact, been accepted by Euro-America and has become the darling of certain segments of the white intelligentsia.

The other side of the debate argues that translating can help children develop language skills and understand American institutions. In 1991, Lowry Hemphill, a specialist in language development at Harvard University, stated that translating is not necessarily something that should be discouraged, since it is "part and parcel of the whole experience of being an immigrant child. People do what they have to do to get by." n12 Ernesto Galarza, whose autobiographical Barrio Boy: The Story of a Boy's Acculturation reveals translating as empowering, learned very early - in a remote, mountainous village in Mexico and in a multiethnic, working-class barrio in Sacramento - to see himself in relation to his family, his community, and his class and to understand and interpret the world in terms of power relationships and class difference. n13 Galarza embraced the experience of translating and transformed it into a powerful tool with which to give public voice to the struggle for the rights of industrial workers, including farmworkers, throughout the world. Within that framework, translating was a powerful, positive, and valuable skill to be used and shared with others.

Most scholars ignore, however, the global history of imperialism in general and the history of U.S. imperialism in particular. In so doing, they reify one of the pivotal national myths that still undergirds U.S. imperialist ideology: the myth that the American continents were largely unpopulated, or only partially inhabited, when Europeans landed on these shores. For California and the West, this reaffirms the myth of the "bloodless conquest" and ignores demographic studies of the last two decades that debunk this myth, provide new data confirming high population density, particularly in Mexico and California, and describe the genocide and demographic holocaust wrought upon native peoples by European conquest and colonization. The myth of unpopulated continents has not only served to rationalize genocide of Amerindians but has also enabled scholars to ignore the fact that Europeans had to communicate with the people living here. Europeans did not initially speak indigenous languages; somebody had to translate, and that somebody was often a child.

Thus, the issue of translating cultures, and specifically the experience of children as translators, is a historical as much as a contemporary issue and experience. It is by no means solely or even principally an immigrant experience, at least not historically. Beginning with Malintzin, or La Malinche, as she is known - a fourteen-year-old girl who was given, with nineteen other young women, by the Chontal Maya of the Tabasco coast to the Spaniards in 1519 and became translator, lover, and tactical adviser to Hernan Cortes - the experience of translating cultures has been lived by native-born children and adolescents, including Tejana farmworkers. n14

Throughout the Spanish-Mexican periods, both Amerindian and mestizo children and adolescents captured in war, raids, and slaving expeditions in the northern frontier of Mexico could find themselves translating cultures, as in the case of boys and young men who worked for the military as scouts, horse-breakers, or herdsmen, and in that of young servant girls who worked in the homes of soldiers and settlers. Indian children, in particular, were often captured, traded, or sold into slavery by Spanish-Mexican military forces and, after the Euro-American conquest, by settlers and P-military groups. n15 On another level, but also in terms of culture, children were at the center of the strategies employed by Spanish-Mexicans as well as Euro-Americans to detribalize native peoples. Catholic missionaries and the Euro-American educational system went to great lengths to "denaturalize or deculturalize" native peoples through their children: in missions, in the case of the Jesuits and Franciscans, and in Indian boarding schools, in the case of Euro-American educators. n16 This is fundamentally what the contemporary English-only movement is all about. Historically, the effort was to subvert the authority of the parents and the community by inverting the parent-child relationship and making the child the authority in certain realms, including the ability to communicate with whoever represented the ruling colonial authority or power.

[238] Although Malintzin's narrative relating her experience is not available, we know that her acts of translation, as well as her sexuality, earned her the opprobrium of a Euro-centered, patriarchal Mexican/Chicano history and culture, which portrays her - the symbolic mother of the mestizo peoples - as a traitor and a whore. In the past decade and a half, however, Native American and Chicana writers and scholars have reinterpreted the documentary record and inverted the spurious sexualized and racialized image of Malintzin, claiming this Indian woman as our own, even as lesbian. n17
Reinterpretations of Malintzin by Chicana and Native American scholars Adelaida del Castillo, Norma Alarcon, and Ines Hernandez center on issues of subjectivities, translation, and agency. Del Castillo interprets Malintzin as a gifted linguist, a young woman who made well-considered choices based on her realities and those of her people. Alarcon examines La Malinche as a paradigmatic figure of Chicana feminism. Hernandez draws upon the syncretic ceremonial dance tradition of the Concheros of "la Gran Tenochtitlan, in which La Malinche is the path-opener - the front(line) - the vanguard," to discuss how in the contemporary period we can choose to be Malinches in a political, social, and intellectual context. n18

The Malinches of today, she states, are "all of the women who have accepted their role as 'tongues' and demanded that their voices be heard." n19 Including especially Rigoberta Menchu, who learned Spanish - the language of the oppressor - and made it her own, just as she learned and used the Bible as an organizing text and tool in her community; these women join their voices and their skills in the global struggle to end exploitation and oppression in all their forms.

With these very few exceptions, and linguist Frances Karttunen's most recent work, Between Worlds: Interpreters, Guides, and Survivors (1994), which discusses the young translators Malintzin and Sacajawea within a global context and experience, scholars have yet to focus on the spoken word and the act of oral translation across unequal relations of power based on age, gender, race, class, and culture. Centering gender and the experience that women have had as child translators and examining the pressures, conflicts, and contradictions that arise when they must translate in a context of unequal power raised critical epistemological and theoretical questions for feminism, and for feminist scholars seeking to theorize history, politics, and culture.

What did a Tejanita of seven summers know and interpret as she broke through multilayered power differentials to translate for a [*240] mother facing racist male creditors, doctors, police, or school authorities? What did a teenage Mexican girl of fifteen understand about sexuality, race, and violence when she had to translate her family's needs to a store in the same town where a white man with a hunting rifle came to threaten her brother away from his daughter. How did these young Tejanas negotiate translating across two patriarchal cultures during the 1950s - their own, which sexualized them, and another, which sexualized and racialized them while disPging their class origins? How did working-class Mexican girls live and interpret the cultural politics of the Cold War, of which one central ideological tenet, feminist scholars have concluded, was a domestic revival that centered the family, prescribed traditional gender roles, and prized marital stability. n20

How did these girls and young women assimilate, accept, and/or resist this experience? What did they change, and how were they changed by the act of translating cultures across space, time, and circumstance? Although still in its very early stages, this study of Tejana farmworkers reveals that the act of translating, and the corollary rites that working-class womanchild translators passed through, challenge current feminist theories about consciousness, identity, choice, power, and the politics of culture.

Age 10: La escuela

"Dile que venimos con Do<tild n>a Chelo P averiguar por que espularson a Mariquita."

"Si, y dile que..."

The door opened and the principal came out, asking, "Who is Mrs. Rodriguez?"

I touched Do<tild n>a Chelo's arm. She looked at me and stepped forward with her hand outstretched.

"We can't have all these Mexican kids disrupting our school..."

"<qmarkx>Que dice? <qmarkx> Que dice?" Do<tild n>a Chelo asked.

"If this is Marrria Rodriguez's mother, tell her that her daughter bit the school nurse, and we had to expel her."

"Dile que Mariquita no tiene piojos. Que soy muy limpia - cada noche caliente tinas de agua y ba<tild n>o a todos mis muchachos y los mando muy limpiositos a la escuela. Y a Mariquita le hago sus trenzas cada ma<tild n>ana. <qmarkx>Por que le echaron todo ese polvo tan apestoso? Dile que la asustaron y la humillaron."

"Do<tild n>a Chelo says her family is very clean. She heats water every night for baths and sends her children to school clean every [*241] day. She braids Mariquita's hair every morning. Why did you pour that ugly powder on her? You scared Mariquita and hurt her."

"Tell her that we do this every year in March when all you kids from the camps start coming in. Tell her that the lice powder is not harmful and that the school nurse tries not to get it in their eyes or mouth. There was no reason for Marrria to cry and scream like she did. And then when the nurse tried to hold her down, she screamed even louder and bit and kicked and hit

Age 10: La escuela
our poor nurse. Tell her she should send her children to school clean and neat. And she should teach her children to behave - to respect school authorities.

"<qmarkx>Que dice? <qmarkx>Que dice? Cuando puede regresar Mariquita a sus clases? <qmarkx> Como puede aprender si me la espulsan? Yo no quiero que se quedan burros como nosotros, que no nos admitian a las escuelas en Tejas. Dile Nenita. Dile."

"Les estoy diciendo, Do<n>tlna Chelo. Les estoy diciendo."

FOOTNOTE-1:

n1. The four translation stories in this paper derive from a larger study of Tejana farmworkers based, in part, on oral histories. These stories are composites of translation stories related by the Tejanas I interviewed and my own childhood experiences of translating.


n5. For the publication from this exhibit, see The West as America: Reinterpreting Images of the Frontier, 1820-1920 (William H. Truettner ed. 1991).

n6. For an overview of twentieth-century Chicano history, upon which this section is based, see Rodolfo Acu<n>a, Occupied America: A History of Chicanos (3d ed., 1988). For discussion specific to the Bracero Program, see Erasmo Gamboa Mexican Labor and World War II: Braceros in the Pacific Northwest, 1942-1947 (1990), and Ernesto Galarza, Merchants of Labor: The Mexican Bracero Story (1964).


n19. Id.

n20. Id.
This paper is drawn from an on-going research project that focuses on uncovering Latinas' voices and experiences in the legal profession in Texas. This research stemmed from our own feelings of unease as we learned that, despite the fact that Texas' population is 29 percent Hispanic, the number of practicing Latina attorneys constitutes a mere one percent of the total attorneys in the state. We had to wonder if this disparity would increase further since statistical predictions suggest that the Latina/o population is quickly becoming the largest minority. This is especially true in the state of Texas where the minority population will constitute the majority in 12 years. Will this growth of the Latina/o population be represented proportionally and accurately by a corresponding increase in the number of Latinas in the legal profession?

In recent years, more women and minorities have, in fact, entered the legal profession as litigators, legal educators and as representatives within the judicial system. Today, for example, women comprise 23 percent of all lawyers, compared with only 3 percent in 1971. Also, 44 percent of all current law students are women, compared with only about 10 percent in 1970.

What would constitute success for Latinas in the legal profession? What would motivate Latinas to enter this field? To answer these questions, we sought to explore
and understand the experiences, both professional and personal, of Latinas who chose the profession of law and who achieved success. What were their actual experiences in the legal profession? Drawing upon feminist methods of the narrative study of lives, we engaged in extensive dialogues with three women who have achieved leadership positions in the legal profession. As sociologists Kathryn Anderson and Dana Jack point out "narrative interviews provide an invaluable means of generating new insights about women's experiences of themselves in their worlds."

The dialogues recorded in this paper were designed to provide a space for Latinas to express their experiences and ideological beliefs about the legal profession. Latina voices have too often been muted by cultural stereotypes or the conventions of language and discourse. Researching women, particularly women of color, in the United States is:

a complex task characterized by the intersection of race, gender, and social class with language, history, and culture... the resulting information is not a mere compilation of idiosyncratic recollections only interesting to a specialized audience; rather, [the stories of women of color] enrich our understanding of issues of race and gender. 

[*245]

I. Latinas: Equity in the Profession

Latinas' participation in the legal profession needs to be understood within the larger economic and social contexts which shape many of these women's lives. For most female lawyers, wage inequity is a fact of life. For example, a recent Price Waterhouse survey found that female attorneys earn less than male counterparts at every level of seniority. Survey results in Texas echoed this national trend with women lawyers earning about $5,000 less than men after being licensed 5 years or less. As women gain in time and experience in the profession, their wage gap vis-a-vis men actually increases. For women who have been licensed 10 to 15 years, the wage gap widens to $36,000; for women licensed more than 15 years, the wage gap holds steady at about $21,000 less than men.

Women constitute a minority in the legal profession and, over time, their numbers dwindle. For example, while women comprise 44 percent of all law students, they comprise only 23 percent of all practicing attorneys. As a group, women frequently do not achieve the high professional status that many men do. The American Bar Association (ABA) Commission on Women in the Profession recently found that "of post-1967 law school graduates in private practice in 1990, 45 percent of the men had achieved partner status compared to only 18 percent of women."

In seeking to explain this disparity, a report by the Ninth Circuit Gender Bias Task Force states that "the majority of women lawyers believe their gender hinders their ability to obtain "plum' assignments, such as becoming partner."

Unfortunately, women's gender also appears to target them for harassment. In a 1993 National Law Journal study, more than 50 percent of female respondents stated they had been sexually harassed while at work, although few women felt willing to report the incidents.

In addition to constituting a minority in private practice, women represent only 12 percent of federal judges and 9 percent of state judges. In the university context, women represent only 19 percent of tenured law faculty. For minority women, the situation is even grimmer. In 1990, less than 3 percent of all lawyers and judges were minority women and less than 12 percent of all women lawyers and judges were minority women. Beyond this, information about minority women lawyers is difficult to attain. In 1989, the ABA Commission on Women in the Profession and the ABA Commission on Opportunities for Minorities in the Profession established the Multicultural Women Attorneys Network (MWAN). In a comprehensive search for data, "the Network found that research inquiring into the problems and progress of minority women lawyers was virtually non-existent."

II. Research Methods

To better understand the experiences of Latinas in the legal profession, we conducted in-depth interviews with three Latinas. Each of these women has achieved significant measures of success in the practice of law. The participants include: (1) a top administrator at a law school; (2) a judge; and (3) an activist and staff attorney for a public interest organization. In discussions with these women, we were interested in hearing stories and accounts about the ways in which they remembered their experiences at each step of their professional journeys.

Modeling our discussions on the "spontaneous exchange within an interview" discussed by Anderson and Jack, our discussions offered the possibility of freedom and flexibility for researchers and narrators alike. For the narrator, the interview provides the opportunity to tell her story in her own terms. For
researchers, taped interviews preserve a living interchange for present and future use; we can rummage through interviews as we do through an old attic - probing, comparing, checking insights, finding new treasures the third time through, then arranging and carefully documenting our results.  

Our discussions were tape-recorded and transcribed. In our discursive analysis we sought to preserve the richness and diversity, or "multilayered texture" of information and experiences provided by each of the women. We also sought to illuminate patterns, relationships of meaning and the complex web of feelings and contradictions expressed in their stories.

More specifically, we employed Dana Jack's method of interview analysis which focuses on three types of "listening" behaviors and analysis. (Jack has also used these methods in her own research on female practicing attorneys.) The first entails listening to the person's "moral language." Paying attention to the moral self-evaluative statements enables us to understand the relationship between the self and cultural expectations, i.e., what does the individual consider cultural expectations to be for her particular role as a woman, as a Latina, as an attorney, etc.? It also enables us to examine the connection between what the individual values and what others value, between how we are told to act and how we feel about ourselves when we do or do not act that way. In a person's self-judgment, we can see which moral standards are accepted and used to judge the self, which values the person strives to attain... [We can then observe the] interaction between self-image and cultural norms.

The second mode of "listening" in interview analysis requires the researcher to pay special attention to the "subject's meta-statements" - those "places in the interview where people spontaneously stop, look back, and comment about their own thoughts or something just said." Meta-statements, then, help to sensitize us to the individual's awareness of an incongruence between what was said and what is expected. In addition, "they inform the interviewer about what [social and cultural] categories the individual is using to monitor her thoughts, and allow observation of how the person socializes feelings or thoughts according to certain norms."

The third mode of "listening" in interview analysis focuses the researcher's attention on the "logic of the narrative." Here, we attend to the "internal consistency or contradictions in the person's statements about recurring themes and the way these themes relate to each other." It is this logic of the narrative which leads to an understanding of the reasoning which dictates the individual's interpretation of her experience.

As mentioned earlier, our initial research questions focused on uncovering Latinas' experiences in the legal profession. In our utilization of these three modes of listening in interview analysis (moral language, meta-statements, and logic of the narrative), three central themes - self-history story, experiences in the legal system, and Latina identity - emerged around which the women employed three narrative/discursive strategies.

Although the following explication of these narratives incorporates the women's quotations in order to demonstrate and preserve the voice, tone, mood, and purpose of their comments, we do not take the words to reflect or communicate simply a transparent "reality." Rather, we see their words as constituting a reality of the women themselves. As Bird has pointed out:

Neither "muteness" nor articulate accounts of self and society represent a direct reflection of "women's status" or the role of women in society; rather, what women can and will say is a product of specific historical circumstances, and emerges in a specific micropolitical context both of male-female relations and the encounter itself.

Thus, we do not perceive discursive contradictions or inconsistencies to indicate mistakes or flaws in narrative on the part of the women. Rather, we perceive such contradictions or inconsistencies to be indicative of the complex and often contradictory nexus of social roles and choices through which most women must navigate as they weave together a construction of identity and social agency uniquely their own:

Voice alone does not create the subjectivity agency requires... We construct ourselves as agents by piecing together our telling stories... in narratives that have explanatory power; as we make our narratives our own, we apprehend ourselves as agents; we become conscious of ourselves as the makers of our lives.

III. The Participants and Their Stories

A. Sophia Rodriguez

1. Self-History Story - "It was always in the back of my mind."
Sophia has been a top administrator at a law school for several years. During this time, she was the only Mexican-American woman employed at this administrative level. Sophia begins her self-history narrative with a moral statement about her potential to be a lawyer. But this moral statement is tempered by the contextual information of the scarcity of professional role-models in her hometown; and, it is tempered by her acknowledgement of the power of the mass media, particularly television: "I was influenced by the TV show - Law and Justice. There were not any lawyer role models in the family or the community. The only professional role models in town were teachers. I was always fascinated by lawyers, but I was not sure that I could do it, [but] it was always in the back of my mind.

[*249] The logic of Sophia's narrative suggests the inevitability of her becoming a lawyer. She systematically lists each of the possible occupations she considered as a youngster and as a student and points out the reasons why each was inappropriate for her. Her comment, "it was always in the back of my mind," points to the conclusion that she was "meant to be" an attorney.

"Ever since I was a kid all the way up to high school, I wanted to be a doctor. Every year for Christmas, I would get a doctor's kit as a kid. Family would tease me and say they would give me a nurse's kit, and I would say "no, I want to be a doctor.' High school was such a fun experience, and I enjoyed my experience. I had a change in values. I enjoyed it so much that I thought I became interested in teaching, but in the back of my mind I was always interested in the law... It's kind of funny. We all go to a doctor when we get sick, so in a way, my doctor was like a role model for me. But I had never been to see a lawyer. I did not know what that was like."

So I scrapped everything, and I decided to be a teacher. I did not really like biology. I'm not sure that I did not really like it. I think that I had a bad teacher... Medicine was out, so I decided to go into teaching. Law was something that was in the back of my mind. I knew that I wanted to get my Ph.D., but I, you know, after several years of teaching, I decided that I better do it now before I get much older. Again, my two options were a Ph.D. in Educational Administration or a law degree. A professor, a long time ago, told me that I should go to law school because that would give me two options. So that's what I did."

2. Experiences in the Legal System - "It's part of the law school experience."

For many women attorneys, their experiences in the legal system began with their experiences in law school. But, for most women, law school was an unpleasant experience. It certainly was for Sophia, who states, "I went to law school and I did not like it. I hated the whole first semester." When questioned further, however, she clarifies by a meta-statement which illustrates her value of people and relationships while still asserting her dislike for the structure and pedagogy of the law school experience.

"I think the whole experience, well, except for the friends. The experience, I don't think, first of all, I've always thought that education should be humane. I did not like the Socratic method."

[*250] As Sophia continues her discussion of her law school experience, she makes meta-statement upon meta-statement indicating that she is "watching" her own thinking. n26

"I did not like the, well, kind of like, well, that's part of the law school experience, not something that was singled out for me. Everybody was going through the same experience. That made it, of course, easier to take and I really did not like the courses, although I realize that's the foundation. I just kept thinking, it's okay, it's law school, in this case, it does justify the act. After the first year, I enjoyed it much more, because I was able to select my classes... I'm not sure that it's that I wouldn't want to practice law, or that I'm disillusioned by it, I don't think it's that. It's that my preference is for education. I want to be an educator. Somehow, I was able to combine the two."

These meta-statements seem to echo the results of Jack's narrative research on women and the legal profession. Jack found that women were more likely than men to make meta-statements in their discussions of their experiences in the legal field because "women have come into a legal system designed by men, for men, and because they still face discrimination, it is easy for them to develop an 'onlooker' attitude of critical observation toward themselves." n27 To take this idea further, we suggest the statements made by Sophia point to the conflict she felt between embracing the legal profession and realizing her preference for education. The statements also illustrate her coping strategies for surviving the experience: "It's the law school experience; everyone is going through the same experience."

3. Latina Identity - "Ethnicity is more of a factor than gender."

"I prefer Mexican-American for self-identification," says Sophia. Her ethnic identity is rooted in the demographics of the law school which she attended:
"This law school has very few non-Mexican-American Hispanics. I think there's more now, but when I was in law school, anyone who was Latina or Latino was Mexican-American."

When commenting on her Mexican-American identity and her experience of law school, Sophia makes the meta-statement that she believes her ethnicity was more significant in shaping her experience than her gender - in spite of the fact that she was one of very few women in her law school class. She believes this to be true because of the perception of how affirmative action was implemented in the law school. More than gender, she sees ethnicity and social class as key factors in her law school experience. Again, she stresses the importance of role models. As her narrative continues, however, we see her citing tensions relating to gender issues encountered by Mexican-American female attorneys.

"I think ethnicity was more of a factor than gender. Some students had that attitude. Within our section, I guess the way we perceived some cases or interpreted cases, a lot of it was just not having the role models and the legal background or experience. A lot of these students came from, well, their dad was a lawyer or their grandfather was a lawyer, so they knew the legalese before they got here. Some of them were speaking it since they learned how to speak. I'm not sure that gender has a role in that. I think it was more of social class and ethnicity. Gender - I was not aware in any of my classes that gender was a problem. Although, I have heard stories, there are some professors... and some of the judges [who] do not think that women should be in the courtroom."

Ultimately, Sophia's ethnic identity takes precedence over her gender identity in the construction of her identity narrative. When asked whether she thinks her ethnic identity is a significant factor in carrying out her administrative duties she replies: "Absolutely. I think the students perceive that too, especially our Mexican-American students." The logic of her narrative stresses the value of ethnic assimilation, of being mainstream to the point where her ethnic identity does not pigeon-hole her into one particular job or position. Mainstreaming also seems to be her strategy of choice for social change. It would appear that Sophia values working within the system in order to achieve change. She states: "I want to be in the mainstream. Why is it that they always have to say, "Oh, you're Mexican-American, you want to be an administrator, go work for the Minority programs." We are needed everywhere."

As Sophia's narrative continues we see her make several meta-statements which operate to reconcile potentially conflicting viewpoints that (1) as members of an organization, Mexican-Americans should not be "seen" only in terms of their ethnicity and thus occupy "special" positions. However, at the same time, we see Sophia argue that (2) it is important to have a minority occupy particular positions so that other minorities "can relate to that person." But in her discourse she is careful not to "privilege" Mexican-American students stating emphatically that she is "able to work with all students."

She elaborates on her perspective: "Yes. Yes you will need minorities to fill those minority administrative positions, but let's not leave minorities just for those positions...I work with all students. When I came to this law school, there were no Mexican-Americans; well, I'm not sure, there was one Mexican-American professor who [*252] was here two of my three years. I hope this isn't discriminatory, but we always look for someone to identify with, someone like me. There's someone like me, you say, "they made it, maybe I can make it, too." Or maybe I can go to them for advice or help or questions... This school does care about me, there's someone I can go to. And at least for me, it has always been easier to approach a Mexican-American, perhaps it is because we self-identify, perhaps we say, "Here's someone like me, maybe this person has had a similar background or experience as I did." Perhaps not, because we are so diverse. For me it is so much easier for me to open up and you can relate more. If all that the students had here were Anglo Deans, then I think it would be hard for them to make up part of this institution. Because of my background and ethnicity, I think I do have a different perspective. I know how much harder it is for these Mexican-American students, because they might be the first one in law school from their family."

Surprisingly, she down plays her emphasis on the importance of ethnic identification and the unique needs of first-generation law students. When asked whether she tries to cater or tailor her activities and programs to the special needs of Mexican-American students, she replies: "Not really. I'm sensitive to the gender and cultural and ethnicity needs. If I'm selecting a committee, I pay attention to those needs. I don't think that it's anything unique or special that I'm doing for Mexican-American women."

The above statement would seem to be contradictory. But if her overall strategy is to mainstream Mexican-Americans into professional work, the logic of the narrative operates discursively to acknowledge and address, while simultaneously down-playing, the unique needs of Mexican-American women in higher education.

B. Judge Laura Garza
1. Self-History Story - "I never wanted to do anything else."

Judge Laura Garza was one of the first Latinas to receive a Juris Doctorate from the law school she attended and one of the first Latinas to practice law in her geographic region.

Judge Garza's self-history parallels Sophia's in her emphasis on the inevitability of her becoming an attorney ("It was all I ever wanted to do."). Like Sophia, she points to the strong influence of an adult in guiding her career choice. While Sophia emphasized the influence of role models in her youth, Judge Garza points to the importance of her grandmother's influence in shaping her future career choice.

[253] "Since I was five years old, I said I was going to be an attorney. I never wanted to do anything else. That's all I ever thought about being. My grandmother, my maternal grandmother, always said to me, 'Eres una perica [you're a parrot], you need to be an attorney.' She is the one who put the idea in my mind. Because I would never back away from anything, I would always argue every point, I was the only one who talked circles around my dad. And, so she put it in my mind to be an attorney. And so from age five, anybody who's known me [in] high school, you can look at my high school annual and you can see my ambition: lawyer. Anybody who has known me since I was a child knows that's what I've always wanted to do. I never had a desire to do anything else."

Judge Garza acknowledges that, when she was a youth, it was uncommon for a woman to be an attorney or for family members to suggest it; but, in a meta-discursive commentary mixed with moral language valorizing hard work, she draws upon the concepts of dedication, self-determination and spirit in her account of her professional achievements.

"It was very uncommon. I was the first one in our family, and I have a very large extended family. I was the first in the family to become an attorney. Since then, I have many relatives who are attorneys. No, it was very uncommon. But this was something I decided I was going to do and nothing has ever deterred me from when I say I'm going to do something, I do it."

2. Experiences In The Legal System - "I was a novelty."

Like Sophia, Judge Garza's first experiences of law occurred while in law school. And, like Sophia, Judge Garza was one of very few women in her class. In addition, she was the only Mexican-American woman in her class. Making the transition to law school that first semester was difficult; she received low grades, which she had never received before. She considered quitting "because I did not think that it was fair for my parents, who were paying my education. But my parents asked me to stay one more semester and try."

Judge Garza joined a study group in which, as the only female member, she fulfilled the gendered stereotype role of note-taker. Throughout her account of the study group, however, Judge Garza never acknowledges or comments critically on the fact that she was doing more work than the other fifteen men in the group. Nonetheless, she attributes much of her success in law school to the fact that she was primarily responsible for obtaining class notes and information. In her narrative, she employs the moral language of the "good student" and the "responsible and care-giving female" who helped to ensure the success of all in her group. "I was the note-taker. It was unforgivable for me to be sick or cut class. The guys would all [254] have a fit if I wasn't there, because we would study off of my notes every semester... After we started studying together, we all passed all our classes and we all passed the bar. Of course, every semester I would get this big bunch of roses from the guys thanking me for my notes and for helping all of us pull together and pass our classes."

In expressing her professional experiences, the logic of Judge Garza's narrative turns on the concept of "novelty." As one of only a handful of Latina attorneys, Judge Garza believes that she was perceived as a "novelty" in the field - a perception which Judge Garza used successfully to her own advantage to meet the "right people," gain political connections, and, ultimately, serve the judicial system.

"I was basically an immigration practitioner. Of course as an immigration practitioner I met a lot of people. And because I was kind of a novelty when I started practicing, there were no Hispanic women who had ever practiced in the courts in [this city]. There were very few women who had practiced."

Following through to the logical conclusion of the narrative, Judge Garza asserts that "being a novelty" was, in fact, an advantage because she was able to use for her own purposes and goals the sympathy and assistance that others were inclined to offer.

"Back then, when I was practicing, because women were a novelty, there were only a few of us that went to court;... it actually was an advantage because everyone tried to help us - clerks, judges, attorneys, people in the district clerk's office. Because we were a novelty, when I first started I considered it much to my advantage. I did not find it a disadvantage at all."
Judge Garza goes on to clarify in the following meta-statements that, while she understands how being a novelty could be construed by others as negative, she herself always used it to her advantage.

"When I was practicing law, my idea was that whatever it took to get what I wanted for my clients is what I was going to do, within certain parameters, of course. But, many times, judges would be more sympathetic towards my case because I was female, because I was young and inexperienced, and because I was one of a kind."

As Judge Garza continues, she changes her discursive tack. The "advantages of being a novelty" theme stressed earlier in her narrative gets dropped and the narrative re-focusses on the theme of the importance of individual hard work and dedication on the part of the aspiring individual. While stating she believed "being a novelty was an advantage," she also points out that she felt she had to perform better, and be more prepared than her white, male counterparts.

[*255] "Back in those days when I was a novelty, I studied more, I attended more seminars, I prepared more, so that if any attorney, male attorney, thought that they were going to take advantage of me because I was a woman, or Hispanic woman, I could play the helpless role to the hilt, but when I got into court, I was not helpless anymore and they knew it. So it made me become a better attorney, because I always felt like I had to be better prepared, I had to be tougher and more ready than anyone else, and I always was."

Interestingly, Judge Garza does not take the next step to critique or question the larger social system which structures the ways in which women must compete with men in the field of law. Nor does she problematize the system which perceives her as a "novelty" and demands that she work harder in order to be taken seriously as an attorney. Rather, the logic of her narrative places responsibility for professional success squarely on the shoulders of the individual while simultaneously advising her to "be [more] prepared [and] more knowledgeable than your opposition." But what Judge Garza does achieve in her narrative is to reconcile, at least discursively, two potentially contradictory positions: First, she suggests in a kind of micro-political, transgressive spirit that "novelty" status can be used to one's own advantage. Second, she recognizes that the "advantage" is actually an illusion and thus Latinas need to be willing to work harder than their mainstream counterparts. Clearly, she is not advocating the status quo; instead, she presents a realistic perspective as well as concrete strategies for aspiring Latinas in the field of law to consider.

3. Latina Identity - "You're supposed to be a mother... My clients are my children."

In addition to her argument of "the advantages of being a novelty," Judge Garza asserts another powerful and morally-infused discursive position that draws upon the cultural expectation and value of the role of motherhood for women - especially Latinas. While motherhood may be the cultural "ideal," Judge Garza is engaged in a very demanding law practice which may not readily afford the opportunity for full-time motherhood. Thus, Judge Garza is in a difficult discursive position. In her narrative, we witness her struggling to reconcile these two contradictory, dimensions of her Latina heritage and identity - which places a premium on motherhood and family - with her professional experiences and expectations.

Judge Garza suggests that being Latina is an advantage because Latinas are able to mediate between the old traditional expectations of women and the newer expectations that women gain some degree of social and economic independence. In combining the old and [*256] new, she seems to prefer retaining many of the old cultural expectations of women's primary roles as wives and mothers and simply adding on professional roles. The cumulative effects of adding additional roles and responsibilities to an already full set of roles and duties could become overwhelming for even the most talented and hard-working woman. While Judge Garza's goal is admirable - the full inclusion of women in the legal profession - the logistics of actually achieving it are unclear. She does not, for example, mention how all of these expectations can actually be met - just that they should be. In the following, she explains her view of the benefits of combining the old traditions with the new feminism.

"Our culture is such that, you know, with like my grandmother... one of her beliefs was that women were born to suffer. You never got a divorce. You just prayed that things would get better... Then we had the women's revolution, where you stand up and fight for what you have coming to you... I think, Mexicana women can take a little bit of that and a little bit of the women's revolution and now when women can get a good education, and I think you can pull all of that together and I think it gives the Mexicana woman a different outlook... Because when you have a woman that all she believes in is women's rights and you have to stand up and be counted and never think about that you have certain obligations at home - you're supposed to be a mother, you're supposed to be a wife (granted you're not supposed to be a rug under your husband's feet), but if you take all of that, and put it together, it
just makes if a softer, more reasonable, more worldly person than if you have just a woman who says, "women's rights and that's it." and they can't see anything else."

Although Judge Garza supports the view that "you're supposed to be a mother, you're supposed to be a wife..." because it makes for a "softer, more reasonable, more worldly person," many women who work in the legal field often forego children because of the demands of their careers. Thus, potential contradictions arise between the way in which Judge Garza suggests Latinas should live their lives and the way in which may actually do live their lives. The two are incongruent. The contours of Judge Garza's life reflect the goals and ambitions of a woman dedicated primarily to her career rather than family. Yet, in her narrative, she is able to wed the two. In the following meta-statements, Judge Garza describes her life choices by invoking moral language which valorizes the hard work and selflessness of an attorney practicing family law for the benefit of disadvantaged Mexican immigrant families. Thus, in some vicarious way, she, discursively at least, fulfills the role of "surrogate mother" because she practices family law and regards her clients as her children. However, the impossibility of position [257]ing women such that they are expected to make a choice between family or career is left largely unexplored in Judge Garza's discussion.

At a more general level, Judge Garza recognizes that the demands placed on women are great - often greater than those placed on men. However, as her narrative continues, it is clear that any mention or recognition of the larger social and economic issues which may contribute to the difficulties of coordinating work and home life for many women are absent altogether in this meta-discourse. Rather, she focuses on the reasons why combining family with work can be impossible for many women and instead asserts: "[my] clients are my children."

C. Maria Martinez

1. Self-History - "There was no family support."

Maria works as a staff attorney for a public interest organization. Unlike Judge Garza and Sophia, Maria did not have aspirations to become an attorney as a youth; instead, her life experiences brought her to the threshold of the legal system. The struggles and hardships she witnessed as a social worker posed issues of social justice that helped shape her decision to pursue a legal career: "After I was a social worker for a while, I saw that the problems that I was dealing with my clients were systemic... I felt that I was working with victims of a larger system, and if I could go into that system and fix whatever was wrong there, then it would prevent a lot of the victims to begin with."

Although Maria was determined to become an attorney who could make a difference, her journey was not an easy one. She acknowledges the struggles that she faced from the very beginning as she alludes to the lack of support she experienced from her parents: "My mother said, "You know, why don't you become a legal secretary, that would be such a nice thing for you.' My father said, "Well, you know you're a social worker, you should just stay as a social worker.' There was no sense of "great, that's wonderful, we'll support you.' I had to overcome their lack of support to even have the idea of becoming an attorney. Of even going and taking the LSAT on my own with nobody behind me saying, "That's great, we'll help you, we support you,' so I think that's the major problem all the time is that I have been pulling myself up by my bootstraps."

Maria's struggle did not diminish once she entered law school. Her narrative explodes with moral language as she relates details of the conflicts she encountered. The following example illustrates the [258] tension she felt between doing what was expected of her as a law student and doing what she thought would further the goal of achieving social change and justice: "The belief system within the law, well, the belief system between lawyers is that it is best if you have no values of your own. In law school, one time, I said, I was feeling low and beaten down, and I saw everyone all dressed up for their interviews, and I had refused to take part of [sic] that interview procedure, and finally I was with a group of people, students eating lunch, and everyone was saying where they were going to work this summer. And they said, "Maria, what are you going to do this summer?" And I said, "Well, I guess I'll just do anything that somebody pays me to do.' And they were all happy, finally Maria had grown up. They patted me on the back and said, "That's great Maria. We are glad you finally matured in seeing what our role really is.' And when I realized that, all the sirens went off in my head, and I finally got to the point where I had no values, where I was willing to sell myself for anything, and that's what I was getting kudos for from my peers. And I thought, forget it. I'm not going to be like that. That's not me, and I wouldn't be able to live with myself that way."

Ultimately, Maria rejects what she takes to be a false code of conduct. The logic of her narrative centers on "the quest for social change and justice." She rejects the usual professional motivators of money, power and prestige, invoking instead, a powerful rationale and vision of women's purpose in the legal system: "Yeah,
I think women want to become lawyers because they want to be change-agents for more justice in society."

2. Experiences In The Legal System - "It just seems like madness to me."

As noted previously, Maria's experiences in the legal system started when she was a social worker. Her narrative demonstrates how although she attempted to help "each person at one time" she felt that she was working with "victims of a larger system." Maria had other professional experiences to share, and none of them were positive. She noted that she "put up with a lot of sexual harassment," as she shared one of her most frustrating experiences in the courtroom: "I guess one of the most awful situations was [when] I had a state case in front of a county district court judge, and it was a business case. I had two corporations fighting each other over who owed who money. And, I was trying to explain to the judge what the usual practice was between these types of companies, and I was explaining what kind of credit was usually given. And, he was just blowing me off, he just wasn't listening to me; he wasn't listening to the facts that I was stating, and he came up with a ruling that [*259*] I disagreed with. And I started arguing with him, but he just didn't understand. Based on the law, what he said was wrong. And, then he says, "You know..." and then he kind of kicks back and he tells this long story about some woman lawyer who tried to appeal one of his cases, what a fool she made of herself when she went to the Appeals Court. But it was definitely, though he didn't use the term, 'little lady,' it was patronizing. And, you know, "don't you even dare try to appeal this because you are just going to make a fool out of yourself.""

When Maria was asked if she believed that the judge would have responded differently if the attorney would have been male, she carefully thought about her response before making the meta-statement, "or maybe even a white woman. I think it was gender bias and ethnic bias, and I don't know which weighed the most." The logic of Maria's narrative clearly displays a critical awareness of the "double-oppression" (gender and ethnicity) some Latinas experience in the legal profession. Unlike Judge Garza, who chose to stress the ways in which she turned her racial "novelty" status into "an advantage" by working harder than her peers, Maria articulates the problems she encountered explicitly and makes it clear that there are no easy answers.

Like Sophia and Judge Garza, however, Maria believes that women have to do much more to be perceived as credible in the male-dominated legal profession. She tells a story about finding the appropriate balance dressing like a woman and like a professional. Through her story, she displays frustration because so much value appears to be placed on the dress code of women in the legal world. The logic of her story reveals that she believes what is truly important is not a dress code, but addressing the problems of our adversarial legal system: "You know, not only do you have to deal with being professional but you have to deal with being sexy, because you have to show that you're female, because then that will upset them if you do not show enough signs that you know your gender. And so, I mean, just to get dressed in the morning, you have to put out much more effort. I mean, the guys here, they put on the same shoes, they have three suits and they have their shirts from the cleaners, and I guess the worse they have to think about is 'which tie am I going to put on today.' Well, I have to come up with an outfit that has a lot more pieces to it, that is more expensive to put together, while nobody cares they were the same suit on Monday and Thursday, so (sigh) there's that level of stuff, which is really the minor stuff. The major stuff is more watching a court system that is based on the adversary system."

Maria attempts to humanize the legal profession through her work, but she stresses that it is a constant struggle, as she compares it to a male-oriented sport, a game of football: "You're supposed to [*260*] come in and be a team player, play real hard and dirty for your side, injure yourself, and injure other people, just for the sake of the game. And it just seems like madness to me. Hopefully, women can affect it, if only by being in those positions and complaining and doing the five percent maneuvering that they have, you know, use that. And maybe the next generation of female attorneys will have a little more maneuvering."

Maria summarizes her gendered-experiences within the legal system, and she offers a hopeful, but realistic, approach to the situation: "I guess just having women in [the legal system], and some of us will turn into men with women's bodies and act just like men and be as ruthless as men and will not bring in the special qualities, specific gender qualities, that women have. But some of us will, and some of us may not be able to, but we will complain about it until the situation opens and softens."

3. Latina Identity - "I'm ruthless, but I'm female; I'm professional, but I'm still a person and with a heart; I can fight with the best of them, but I also have family... just so many contradictions... for women and for Latina women, the pressure increases...."

As we have seen, Maria has experienced attacks on her ethnicity and gender at various times throughout her legal career. Being Latina has not been easy for her, but she seems to withstand the ethnic bruises she
has received. Painfully, she recalled an occurrence in law school which illustrated her distinct experience as a Latina: "I think in law school, we had to swallow a lot more humiliation and a lot more attacks. Just in classes, there were many more references that were insulting. I had to deal with much more rage, than other people, than the males or the non-Latinos. I remember one class, the Constitutional Law professor referred to women as 'pussies' for an entire hour. And in another class, he referred to Latinas in a very deprecating way. So, other women just had to go through one day of rage, I had to go through two days of rage. So, I think that just in order to survive, you have to have this attitude that yeah, you are going to suffer more than everybody else, you are gonna have to put out more than everybody else, you're going to have to study more than everybody else, and you are going to have to prove yourself harder than anybody else. And that, you have to make peace with that somehow, so that you don't walk around in a rage all the time."

As Maria continues to clarify the frustrations she has encountered because of her ethnicity, she stumbles upon one meta-statement after another: "I don't know how to do it, to make peace between the part of me that says, 'this system is not working, and it's not working because we are on an adversary system and that doesn't, often [\[*261]\] times, it creates more problems than it resolves.' And at the same time, to be able to be a hot dog lawyer that goes out there and guts the other side with as much ruthlessness that a lawyer is supposed to have. Somehow, you have to say, "I'm ruthless, but I'm female; I'm professional, but I'm still a person and with a heart; I can fight with the best of them, but I also have family.' It is just so many contradictions, I don't know, for women and for Latina women, the pressure increases because you have to prove that you are professional and much more."

In the following response to the question regarding the approaches that Latinas must take in order to establish themselves within the legal community, Maria states: "And so each time I walk into the room, I don't get the benefit of 'here's a lawyer coming in,' it's just 'here's a Latina walking in, maybe she makes good tortillas.' And then there are people who love Latinas. Latinas are beautiful, they say - as long as they stay in their place. But you have a Latina who is your boss, or a Latina who is in a position of power, or a Latina who has to act mean and rough in order to fulfill her functions, and suddenly your expectations of her switch. And you don't have that general lovely feeling of Latinas; you feel like she has really snuck in and taken advantage of something and broken the rules." Clearly Maria struggles to deal with the constant contradictions facing Latinas in the legal system. Throughout the conversation, she attempts to make sense out of the highly patriarchal legal system in which she operates.

Although Maria does not seem to want to "fit into" the legal system as it exists, she still displays a level of frustration and despair with the realities facing Latinas: "I'll never fit in; this will never work; this will never feel right. I will always feel like a stranger." Maria continues her narrative and concludes with a very powerful analogy, as she illustrates that Latinas are on a crucifix: "Latinas, I think, are on a particular crucifix, because they are pulled on one hand by the injustice that they see and wanting to fix it, and on the other hand they are pulled by their family responsibilities that they take real seriously. You know, they [say], "Should I take this civil rights job that will help me, maybe, make some of the changes I want, or should I take a straight job and make enough money to buy my old mother a house, whose financial situation is so rough?" I see women with those kinds of moral questions much more than I see men, or Latina women, much more than I see men, because I don't know, maybe the Latina women take their family more seriously...." Maria catches herself making stereotypical statements and clarifies in this meta-statement: "I'm making all these horrible generalizations you know, there are certainly white women and white men, black women and black men, and Latino men that think [*262] in those terms. But just generally, I think Latinas feel that more. [They ask themselves.] "Do I have a baby or do I push on my career? Do I spend time with my husband and go home and cook for him, or do I spend the late evening at the law firm so I can get ahead and become a more powerful person within the law firm?" The generalizations Maria mentions are painfully realistic for Latinas.

IV. Conclusion

This research has focused on the experiences and contributions of three powerful, competent and articulate Latinas in the legal profession. In many ways, these women may be viewed as pioneers, as they charted a new terrain for Latinas of the future. While each woman achieved success in her profession, the ways in which each woman constructed the narrative of her professional and personal life are reflected in her won social, political, and cultural beliefs.

Specifically, we examined each woman's discursive construction of her (1) self-history story, (2) experiences in the legal system, and (3) Latina identity. Sophia and Judge Garza knew from an early age that they were destined to be attorneys. Their self-history narratives trace a pattern of inevitability as they moved...
step-by-step towards their professional goals. For Maria, the path toward the law field was not so clear from the start. As a social worker she realized the systemic basis of social inequalities which led her to become engaged in the practice of law in hope of effecting social change.

As for their experiences in the legal system, all three women characterized their law school experiences as negative. Sophia disliked the Socratic method. Judge Garza fell into the stereotypical role of note-taker for all her all-male study group. Maria was the target of overt expressions of racism and sexism by her professors. In addition, both Sophia and Judge Garza were one of only a few Latinas in their law school classes. As practicing attorneys, all three women acknowledged the greater burden placed on women, especially minority women, to be better than their white, male counterparts. All of the women also discussed the difficulty of resolving conflicts between family and work duties. Only Maria, however, located her discussion of these concerns within the larger, social and political context and explicitly addressed its systemic basis.

Each woman proudly asserted her Latina identity - although this identity was conceptualized and seen to operate differently in each woman's professional life. Sophia down-played her ethnic identity in order to achieve the goal of mainstream professional participation by Latinas. Judge Garza acknowledged her Latina identity as a potential source of conflict and discrimination although she was able to turn the "novelty of being a minority" into an advantage by pursuing her goals relentlessly. Maria centralized her Latina identity not only to her private self, but also to her professional mission. She revealed that her ethnicity has been a target of discrimination in the past and she worried about how effectively she will be able to continue to fight for gender and racial equality in the future.

The narratives of these women are just a starting point for social change. Speaking to the issue of women's agency Mary Jo Haronian suggests,

> any single story can be doubted, or called a fluke, or written off in a hundred ways... Voice alone does not create the subjectivity agency requires, [it] does not establish the ground from which we can continue to speak until we are heard... Once the stories are told they must interact with the world, thus requiring conversation and debate... n28

These stories and the voices they represent must continue to engage the world. We hope that the discussion put forth here will serve as part of that worldly engagement. As Haronian notes, it is not that "Voice equals Agency," but that "the use of our subjectivity, not merely its existence, [is what] constitutes agency." n29 But, "certainly, when we voice our stories, claiming lives of which we are the experts, this subjectivity does begin to emerge." n30

**FOOTNOTE-1:**

n1. In this work, "Latina" is defined as a woman of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish-speaking culture or origin. For further elaboration of Latino/a nomenclature see Elizabeth Martinez, In Pursuit of Latina Liberation, 20 Signs: J. of Women in Culture and Soc'y 1019, 1019-28 (1995).


n11. Herd, supra note 9, at 3.

n12. Id.

n13. Id.

n14. Id. "Minority" was defined as including the following groups: African-American, Asian-American, American Indian, Alaskan Native, and Hispanic-American.

n15. ABA Commission on Women in the Profession, supra note 5, at 5.

n16. Pseudonyms are used throughout this paper to preserve the participants' anonymity.

n17. Anderson & Jack, supra note 7, at 11.

n18. Etter-Lewis, supra note 8, at 43.


n20. Id. at 20.

n21. Id. at 21.

n22. Id. at 22.

n23. Id.


n27. Id.


n29. Id.

n30. Id.
I. Introduction

My husband is fond of saying that I have a different last name from him because I have a different father. When we were married twenty years ago, I decided not to change my last name, not because of a deep commitment to feminism or even as a clue to the world that I am Mexican ("Novoa" doesn't carry a great deal of ethnic recognition). Rather, I kept it as a standard that I carry high enough for my father to see. My father was an extremely dignified, intelligent, and powerful aristocrat. He was also capable of charm and wit, which slightly tempered his patrician bearing. He and my mother had three children who survived all of us women. I do not know how my father felt about not having a son, but when his brother, my uncle, learned that I had been accepted into law school he laughed. A woman lawyer was inconceivable, and in his family perhaps even an outrage. I hold my name because I am the product, and yes the standard, of my ancestors.

II. Family Law

I am a Roman Catholic, Mexican-American woman; a mother and wife; a teacher of Family Law, and a teacher in a clinical program that serves the homeless. From my perspective as a Catholic who believes and tries to live the message of justice, as a woman of color who confronts and fights discrimination on an almost daily basis, as a teacher who hopes to instill a commitment to social responsibility, Family Law is all askew. Family Law deals with the most intimate and basic personal relationships - children and parents, wives and husbands, siblings, grandparents - yet it applies a legal process based on autonomous public and private economic rights to those intimate relational realities. Family Law should be rooted in preserving and protecting intimate relationships, in nurturing the young and the elderly, in identifying and preserving family stories. Instead, it is rooted in preserving those domestic systems that created or expanded the economic empire of the "Founding Fathers," the white landed males of the colonial northeast. n1

In my research last summer, I found that "traditional" family historians assert that family in the United States is and has always been a nuclear grouping and that "households" are composed only of the traditional nuclear grouping. Such an assertion ignores the fact that the colonial and post-colonial white middle-class household was extended by economic relationship, in that the dominant households included servants, apprentices and slaves. More important, it ignores the multitude of cultural traditions in the United States, which extend the family by both horizontal and vertical kin relationships. n2 Retention of the limited and unrepresentative perspective has been excused by...
historian John Demos as appropriate because it is the perspective to which all Americans aspire. n3 The excuse assumes first, that all people of color aspire to be white; second, that they want to adopt the social, political and cultural history of the Founding Fathers; and, third, that they want to give up their own rich heritage. I do not, and I suspect that you do not either.

For Latinas(os) the word "immediate" has no applicability to family. For us, family can include anyone with whom we can identify a common ancestor by blood, marriage, or affinity. Our family extends well beyond the limits of our cohabitation and our homes are frequently shared by several generations and by collateral relatives as well. In American law and society, on the other hand, the word "immediate" functions as a limit to family relationship. For example, the Immigration and Nationality Act n4 defines immediate family as parents, spouses, and children. Most employers define family, for purposes of sick and emergency leave, [*267] and for inclusion on medical insurance policies, only as spouses and minor children. Some now include domestic partners, but not other family members. n5 The concept of household, which implies an economic unit, is central in American law, society and family history. The Spanish language, on the other hand, has no word for household. We have a word for house and home, words for property and estate, and a word for family, but there is no word for household.

III. American Family History

The economic center in the American northeast in colonial times was the household. The lower classes, of course, did not form households; instead they frequently lived with their employers, and occasionally joined together to rent vacant dwellings or temporarily stayed in poor houses. n6 Throughout this colonial period, "racism had already become a prevalent characteristic... and was expressed in societal acceptance of disPte treatment of individuals whose color... marked them different from English men and women." n7 For example, in Jamestown, indigenous Americans who came to trade or visit, "were placed under guard," and inhabitants were prohibited from speaking "to them without the governor's permission." n8

In contrast, an upper or middle-class man, whether he owned productive land, was a merchant or smith, or provided other reputable service, had the household as his center. His family was a community of shared activities in which his wife, children, servants and slaves, contributed to the wealth and success of his family. Upper and middle-class households consisted of the nuclear family, as well as the children of friends or relatives who lived in the household temporarily, plus the slaves, indentured servants, other servants, apprentices, children "bound out" to the man, and occasionally indigents and convicts who were placed with the family for rehabilitation in exchange for their services. n9 The husband controlled all of the family wealth and indeed the family and [*268] household itself. From colonial times until the beginning of the twentieth century, the law recognized the white man as the autonomous owner in family and household relationships. n10 Whatever the individual relationship might have been between any man and his wife, children, servants and slaves, and whether he exercised the power granted to him by the law, he possessed substantial, if not complete, power over the person and property of his wife, children, servants and slaves. n11

The value of the free white man depended on the extent of his economic empire, and the status of each family member, including servants, was determined by the value of the man. He owned the benefit derived from the work of all those that surrounded him. n12 His wife, children, and slaves labored, without compensation, toward the success of his enterprise. As members of the household, they shared in his success, but only to the extent that he used his wealth to improve the family holdings. n13

Any property the wife had owned prior to marriage or earned or acquired during marriage was controlled by the husband. n14 The Married Women Property Acts had not yet come into existence, consequently all of the wife's property and all of the value of her personal attributes, including her business acumen belonged to and benefited her husband. n15

Likewise the primary value of children was in their obedience and their services to the man/owner. n16 Children were an asset; their economic value was greater than the cost to maintain them and their recognized value was in their potential as helpers and free laborers for their father. Like all other assets, the services of a child be [*269] longed to the father. n17 The father's rights over the children were complete even to the exclusion of the mother. n18 Custody in reference to divorce was rare. In fact, when divorce or sePtion did occur, the children were awarded without question to the father. n19 Additionally, a father could deny the mother control over her children even after his death by appointing a testamentary guardian. n20

Family Law was, as it had been in the past - and as it continues to be - rooted in property relationships. n21 Consequently, Family Law had everything to do with the maintenance of the man as owner n22 and little to do with personal relationship. n23 For example,
Family Law assured the subservience of the wife to the husband, n24 and the obedience of the children to the father, n25 but did not regulate the relationship between the mother and the children. n26 Furthermore, although Family Law regulated the relationship between master (a man) and servant, n27 it had little to do with the relationship between the male servant and his wife. To the extent that it authorized the binding out, or the indenturing of the children, the law did regulate the relationship between the male servant and his children. n28 [*270] Family Law, however, had little to do with the families of the poor; in fact, an entirely separate area of the law was created to deal with them. n29 Family Law, of course, had nothing to do with slaves, leaving them to the law governing real estate and chattel. n30

The traditional Family Law perspective has developed from the wants and needs most commonly associated with powerful men. It does not include the perspective of poor white men. n31 It ignores the stories of white women and the stories and families of slaves, free blacks, Asian immigrants, the indigenous peoples sometimes referred to as Native Americans, the indigenous peoples sometimes referred to as Mexican-Americans, and the poor. It further fails to take into account the legal heritage of the South and Southwest. n32 In spite of the fact that the United States has grown in area and diversity, the northeastern colonial perspective continues to underpin most of the basic assumptions in family law.

IV. Patriarchy and Paternalism

In discussing the changes in the family during the sixteenth and seventeenth centuries in England, Lawrence Stone defines patriarchy in the following way: "the man rides to work on a donkey or mule - if he goes to work at all - while the wife follows behind on foot with the heavy tools. The husband is legally and morally free to beat his wife, although not to the point of maiming or murder... A wife serves the husband and eldest son at the table, but rarely sits down with them." n33

Ah, here is my family again! I remember my father walking several paces in front of my mother and we always followed behind her. We always had a servant at home, nonetheless, the meals were as Stone described. There were no male children in my family by the time that I was born, so meals began with my father alone at the table. My mother would carefully prepare his plate in the kitchen and bring it in to him. Once he was served, the rest of us were free to serve ourselves and sit with him. He had his own china plates that were different from ours and had to be washed by hand because he did not trust the electric dishwasher.

[*271] England did not conform as fully to the "ideal" form of patriarchy, as did the southern and eastern Mediterranean countries. n34 However, during the sixteenth century, England experienced a strengthening of patriarchy and of the importance and power of the father. n35 So, it could be said of our English colonial and post colonial times that as "long as the family was intact, the common law treated only its head, the master of master-servant, the guardian of guardian-ward, and the baron of baron-feme." n36 The father's dominion over his children was viewed as ordained by natural and divine law, n37 the same law that gave him dominion over animals, land, women and people of color. n38

When I was growing up we had a nighttime ritual. I went first to my father and kissed his hand. Then, I went to my mother who made the sign of the cross on me, giving me her blessing for the night. I remember being in Mexico City, at my aunt's house. The father of one of the servants came to visit his daughter before returning to his native village. When she heard that her father was there, the girl ran to the front of the house, fell at his feet and kissed his hand. They visited for a short while before he left. I wondered about that incident because whenever I saw my father after a long visit away, I would kiss his cheek.

Most societies have a clear division of labor based on gender. Except for the care of young children, which is a female role. Any particular task might be performed by men in one society and women in another. However, those duties allocated to men generally carry the greatest status. n39 Although there is some evidence of various societies that are generally egalitarian, there is no evidence of the existence, at any time, of a matriarchal society. n40 There are "matrilineal societies, where property, rank, office, and group membership are inherited through the female line... Even so, in all matrilineal societies for which adequate descriptions are available, the ultimate headship of households, lineages, and local groups is usually with men." n41 Certainly in the Judeo-Christian tradition women were not allowed authority or rights, n42 and in the English tradition, women were "protected" through a legal disability, as were children and idiots.

It is unclear whether, and to what extent, attributes associated with women are biologically mandated rather than social or cultural. n43 It is clear that some attributes and some functions have been associated with women for centuries. n44 It is also clear that in the United States, the cooperative and the competitive virtues n45 became gender-specific and venue-
specific during the eighteenth and nineteenth centuries. n46 Of course, any trait, whether culturally associated with women or men, might be possessed by either; n47 and in fact, many now believe that women and men are personally most successful when they possess and are able to express both female and male attributes. n48 Nonetheless, gender identification of personality attributes, whether natural or imposed, is an integral part of our [*273] history. n49 Additionally, we clearly demonstrate a higher societal value for attributes and functions identified with men. In writing about American employment, sociologist Debra Renee Kaufman suggests "that the anticipation of greater participation by women in high-status occupations has resulted in a decline in the prestige and desirability of these occupations by both males and females. The converse was found in female-dominated occupations entered by males." n50

American women have moved into the world of business, commerce, law and politics primarily by exercising those individual talents that society allocated to the public/male sphere; men, for the most part, have not moved into the sphere of care-givers. n51 Those women who are unwilling to give up the traditional role of caregiver are generally rewarded with low status, and if they are separated from men, a life style at or below poverty level. n52

[*274]

V. Industrialization and Consumerism

My mother's sister told me that my mother was the first Mexican ever to graduate from the public nursing school in San Antonio. They both came here, in the early 1920s, from Eagle Pass. My aunt, however, never finished. She said that it was too hard and that there was too much prejudice. But my mother finished and went to work as a public health nurse. However, my mother gave up nursing after she married my father. It was her job to stay at home, care for the house and children played, women cared for others. As Michele Hoffnung stated, "things done outside the home are for money, inside the home they are for love." n53 Since the care of children and dependent family members has no public status, and therefore no public value, women provided the care of home, children, and the elderly and sick, and women were expected to provide for them out of a sense of obligation and commitment. n54 To become a middle-class wife was to answer a "call" to provide for the common good, n55 to be unselfish, and to be primarily concerned with the good of others. n56 In the nineteenth century, young white women sacrificed their own freedom to become wives and mothers. After marriage, many women from the middle and upper classes, who were unable to give voice to the pressures of maintaining the moral superiority that was then expected of middle-class wives, suffered from a variety of physical ailments. n57 As a result, the "ideal" American woman was thought to be delicate by nature. n58 Women of color and poor women of course were not delicate by nature. They continued to work as domestics, in the fields, and in the factories. Even today, the concepts of femininity derived from the Cult of Domesticity are not generally applied to women of color. n59 Black women are stereotyped as "independent, competent, [a]... dependent and infantile." n60 The competitive traits when applied to black women are not viewed in any positive way, but instead are used to place "black women outside of any definition of womanhood." n61 Latinas are stereotyped as hot-blooded temptresses or as domesticated and servile housekeepers. n62 Professor Ontiveros relates that Mexican women are imported as housekeepers and are then sexually abused and harassed. Partly because of the Hispanic cultural mores' emphasis on submissiveness, and because our American "society considers Latinas naturally sexual... often perceived as readily available and accessible for sexual use, with few recriminations to be faced for abusing them," n63 many of these women have difficulty in seeking and getting help.

The extreme individualism of powerful white men in the United States existed only in conjunction with the supportive domesticity and moral superiority of their women. It was only because cooperative traits were enshrined in their homes, that men were able, during the industrial revolution, to abandon interdependence and cooperation in the competitive market. n64 During the American colonial period, personal and social dependent relationships were recognized as an integral part of the lives of all individuals and as an essential component of communal life. n65 Dependence on, participation in the community, recognition of that dependence and of the need for participation were the norm. Even after the American revolution, collective activities continued in the business community, and families [*276] "were expected to work together with economic and political institutions in a system... that reconciled liberty with duty, self interest with altruism, and male principles with female ones." n66 Honor, self-reliance and independence were civic virtues; virtues of the collective community, not of the individual. n67 Soon after the rise of competitive capitalism, however, the public n68 community began to shed its acceptance
of interdependence and cooperation, traits which become acceptable only among women and the religious community. In order to promote and advance the free market, competitive market attributes - such as ambition, power, and calculation - were liberated from the restraints of communal and cooperative transactions that had previously existed. The emerging myth of the self-made-man required not only that men succeed, but that they do so through the use of competitive individualism and self-reliance. The "cult of home" became a necessary component to the country's growth and development because it allowed people "to release the full range of aggressive and assertive energies... [and to] still anxiety and ward off guilt about their own contributions" to the evolving competitive market. Consequently, the cooperative virtues became necessary for successful men in the public sphere, whether market or political, and simultaneously forced the devestiture of the cooperative virtues from the public and private lives of men. The cooperative virtues, however, continued to exist, and indeed were required of, and enshrined in women. In other words, caring emotional relationships were banished from the public arena and made personal. Men experienced them only in the home, where the woman was held "as hostage to the values that men both cherished and violated in their daily lives." Using Demos' description of the period, as the home became a refuge, it became a refuge from society, a refuge from the community. Taking refuge from the community rather than in the community, was a monumental societal change. Today, the prevalent belief is still "that it is only within the family that one can find intimate relationships..." However, cooperative virtues now appear to be retreating from the home to the individual. Emotional relationships are still conceived as centered in the home, independence, self-reliance and freedom have retreated to the individual. According to Bellah et al., "the present ideology of American individualism has difficulty... justifying why men and women should be giving to one another at all. Traditionally, women have thought more in terms of relationships than in terms of isolated individuals. Now we are all supposed to be conscious primarily of our assertive selves." These authors go on to comment on the need to "re-appropriate a language in which we could all, men and women, see that dependence and independence are deeply related, and that we can be independent persons without denying that we need one another." We Americans do not perceive ourselves as an independent and self-reliant community, or even as independent and self-reliant families or households, but rather as independent and self-reliant individuals. We are communal beings. Our identity should be firmly rooted in a social network, but American society interferes with the development or maintenance of such a network. Professor Mary Ann Glendon writes, The problem is that, although we have a highly developed linguistic and conceptual apparatus for thinking about and dealing with individuals, market actors, and the state, we lack adequate concepts to enable us to consider the social dimensions of human personhood, and the social environments that individual men, women, and children require in order to flourish. The American myths of independence and self-reliance insist that the worth and identity of an individual are based on personal and independent achievement. In other words, worth is tied to personal glorification, not to communal identity. Added to that are the facts that communal virtues are no longer acceptable in the public sphere and that the worth of the private sphere has shifted to its ability to service the individual rather than the community. Concurrently with the increased privatization of the cooperative virtues, Americans have developed an excessive preoccupation with self and a cult of consumerism. Industrialization and the inevitable emergence of the competitive national market required increased consumerism and materialism for growth. By 1920, consumption was well established and accepted as a necessary, public, American trait. Both through instilling in the American people a perceived need for luxuries and through creating constant change, improvement and variety in those products deemed to be necessities, new market segments were created. The substitution of need for want, and the requirement of variety for happiness, in the mind of the American public, occurred through the use of advertising. Advertising increased dramatically after the middle of the nineteenth century. Between 1945 and 1960 alone, it increased by 400%. Since the middle of this century, consumption has been synonymous with freedom and patriotism. The import of American freedom is contained in consumer choices. The idealized American liberation from oppression has been actualized as a multiplicity of market choices, which allows us to gladly "shop "til we drop." As citizens of a mature nation, Americans "have learned to experience liberation as... the freedom to choose everything at once." Consumerism has driven American society toward increased individualism and narcissism. The American
dream has shifted and now promises that one can become whatever one chooses by buying the right products. In the first half of this century, consumption was viewed as a vehicle for satisfying general and communal needs and desires. n90 Advertising was aimed at women and, through them, at families. Products, such as washers, dryers, stoves and vacuum cleaners were advertised to help the wife and mother in creating the perfect home-refuge for family members. However, after the 1950s, market strategists began to "pander to American youth," and by the 1970s, spending became "oriented more toward personal recreation." n93 The shift from communal needs to personal recreation occurred as a result of an effort to create additional market demand through a proliferation of market segments. The shift is not indicative of a decrease in the purchase of washers, dryers, stoves and vacuum cleaners, but rather of a substantial increase in the purchase of products for individual use. For example, most middle class families own one washer, dryer, stove and vacuum cleaner, but own a separate television and stereo system for each member of the family and sometimes for each room of the house. As a result, consumerism has become highly individualized and has served to fuel increased isolation. n94

A by-product of the increased individual-consumer culture is the mistaken belief that our personal values and security depend on the things each of us has yet to acquire, rather than on our relationships with others. n95 The consumer culture encourages us to belittle the value of others and instead to accept "a world view in which every thing or person we encounter is evaluated by its ability to satisfy [our] needs or improve [our] self-images." n96 In her book, On Her Own, Ruth Sidel reports on a systematic evaluation of fourteen women's magazines, where she found that "virtually everyone pictured is clearly middle class" or upper middle class, and even more disturbing that some of the magazines "openly display the lower middle and working classes." She goes on to say that, "among the hundreds of features, viewpoints, articles, occasional fiction, advice, and how-to columns, there was not one instance of members of the working class being depicted in a positive light." She found only two magazines (Essence and Ms.) where, "the well-being of the individual is at all connected with the well-being of the larger group." n97

VI. Strengths of Dominated Groups

The traditional Family Law history views the modern era, starting at the beginning of the twentieth century, as the time when women moved "up" from the confines of the private sphere into the "egalitarian" public sphere. Taking seriously the language of freedom and equality in our constitution, champions for the oppressed have lessened the systemic domination of women that is prevalent among many of the varied cultural traditions and the official subordination of non-white groups, which was taken for granted at our inception. n98 The apparent liberation of women and other dominated groups came through the grant of a series of rights intended to advance us from a position of subservience to one of equality. n99 The advance is apparent but insufficient. n100 It is insufficient because it judges the essential equality of women from the male perspective, and in a parallel line of thought, the essential equality of people of color from the white perspective. n102 It completely fails to recognize the intersection of gender and race/ethnicity. n103 It has sometimes recognized male virtues in women, rather than recognizing the essential value of female virtues, as expressed by either white women, women of color, or men. n105 Rather than embracing the richness of multiculturalism, it has enshrined a White perspective.

Many "minority" ethnic and racial groups offer to American culture a communal spirit, the American culture. For example, "Native American tribes subscribe to communal values as the guiding principle for the laws that govern an individual's conduct..." n107 Similarly, although Mexican immigrants come from a culture that is highly patriarchal with a strong tradition of overt male strength, they also come from a culture where "maleness" includes free expression of emotions and of the co-operative virtues. We also bring a strong sense of celebration and humor with an ability to freely laugh at ourselves. We are fiercely committed to family and have an inclination to extend the bounds of family to include others. Related to our commitment to family is a tradition of hospitality and generosity. Unfortunately, the hegemonic process of Americanization neutralizes these and other communal traits offered by non-dominant groups and threatens the continued acceptance of the co-operative traits offered by all men, among women who participate in the public/business/professional sphere, and at an increasing rate, among all other women as well.

VII. Conclusion

My father was a doctor who chose to work in the barrios of San Antonio. Sometimes people would appear at our house with a basket of eggs, a couple of chickens, or a turkey. Eventually I understood that they were his patients. Every weekday he made hospital
rounds in the morning and housecalls in the afternoon. Sometimes on Sundays I went with him to the barrio, the westside, where he visited the homebound. The compassion and kindness of his work contrasted poignantly with the cold hierarchical experience in our home.

My father sent us all to the Catholic school, where I was again confronted with a hierarchical gloss on the virtues of compassion and justice. Both experiences called out the message of prophetic song. The prophet speaks justice to power, but is able to do so only after having learned justice by listening to the authentic voice of the powerless. My father, the patriarch, and my patriarchal Church clearly, but unconsciously, proclaimed that it is the call of the pilgrim church to infiltrate and humanize institutional structures: as prophet to confront and challenge power, as priest-mediator to seek solidarity, and as servant-king to minister to the needs of the marginalized.

FOOTNOTE-1:

n1. In the early years of our republic only White, landed men could vote, based on the theory that only the landed had a legitimate stake in society. See, e.g., Charles E. Beard, An Economic Interpretation of The Constitution Of The United States 64-71 (1966); Charles S. Sydnor, American Revolutionaries In The Making 35-37, 42, 147 (1966) (originally published as Gentlemen Freeholders).


n6. See Ralph J. Crandall, Family Types, Social Structure and Mobility in Early America: Charlestown, Massachusetts, A Case Study, in Changing Images Of The Family, supra note 3, at 61, 75-79.


n8. Higginbotham, supra note 7, at 30. See also, Beard, supra note 1, at 24-25.

n9. See Crandall, supra note 6, at 67-69, 77-79; Demos, supra note 3, at 47; Barbara Laslett, The Significance of Family Membership, in Changing Images of the Family, supra note 3, at 231, 236-37.

n10. See Hawke, supra note 7, at 288.


n12. Demos, supra note 3, at 49-55. As time went on he maintained his position in the center of a workforce which supported him, even as he moved from the home to the factory.

n13. See, e.g., McGuire v. McGuire, 157 Neb. 226, 59 N.W.2d 336, 366 (1953) (noting that as long as the home is maintained, as if the parties are husband and wife, the wife cannot force her husband to spend money on her, if he chooses not to.); The ETNA, 8 F. Cas. 803 (D.C. ME. 1838) (father sued shipowner for son's wages).


n16. See Crandall, supra note 6, at 73.

n17. The Father had the right to bargain away the services of the child, Plummer v. Webb, 19 F. Cas. 891, 892 (D.C. ME. 1827) (No. 11,233), or to recover as
damages the wages paid directly to a child. The PLATINA, 19 F. Cas. 813, 814-15 (D.C. Mass. 1858) (No. 11,210). He did, however, also have an obligation to support his wife and children, and he could be deprived of the wages of the child if he refused to support his family. The ETNA, 8 F. Cas. at 804.

n18. Children were not viewed as property (see The ETNA, 8 F. Cas. at 806) but they were certainly part of the vehicle for the acquisition and maintenance of the man's estate. In addition to whatever emotional bond he developed with his children, they were "good" children to the extent that they contributed positively to his estate.


n20. See Blackstone, supra note 11, at 441.

n21. Professor O'Connell suggests that maintenance of property exchanged at marriage and the influence of the early church were the primary forces that formalized the institution of marriage. Mary E. O'Connell, Alimony After No-Fault; A Practice In Search Of A Theory, 23 New Eng. L. Rev. 437, 445 (1988).

n22. See generally Basch, supra note 14.

n23. The community and especially other members of the same sex provided the most important intimate relationships. See Coontz, supra note 2, at 65-66.


n25. See Gail D. Hollister, Parent-Child Immunity: A Doctrine In Search Of Justification, 50 Fordham L. Rev. 498, 491 (1982). In the mid-seventeenth century, Massachusetts and Connecticut enacted statutes that allowed for the death penalty for a child over the age of sixteen who was stubborn or rebellious or who cursed or struck his parents. Id. See also Lawrence Stone, The Rise of the Nuclear Family in Modern England: The Patriarchal State, in The Family In History (Charles E. Rosenberg ed., 1975).

n26. See O'Connell, supra note 21, at 464. This practice continued for some time, see, e.g., Larkin v. Woosley, 19 So. 520 (Ala. 1896).

n27. Early Virginia laws, for example, regulated the length of servitude, and the punishment available for runaway servants. One statute prohibited trade with a servant without the master's consent. See Higginbotham, supra note 7, at 33; Hawke, supra note 7, at 289-90.

n28. All fathers had the right to the value of the services of their children and could contract with others for the services of the children for which the father would be compensated. The ETNA 8 F. Cas. at 806.

n29. See Crandall, supra note 6, at 76, 79.

n30. See Higginbotham, supra note 6, at 50-54, 160-70.

n31. Crandall, supra note 6, at 75-79.

n32. An analysis of the effects of the legal, religious and cultural heritage of the South and Southwest is beyond the scope of this article.

n33. Stone, supra note 25, at 34.

n34. Id.

n35. Id.

n36. Basch, supra note 14, at 17.

n37. The ETNA, 8 F. Cas. at 805; Meecein ex rel Barry, 25 Wend. 64 (1840); 3 Hill 399 (1842).


n40. A matriarchal society is defined as a society in which either: men have no involvement with children or women after insemination or in which power is sited in women.

n41. Gough, supra note 39, at 84, 85.


n44. In the majority of cultures women care for children and perform tasks associated with shelter and preparation and storage of food. See Gough, supra note 39, at 83-84, 91.

n45. I use the word "virtue" to describe the positive side of any human characteristic. For example, the virtue of tenacity is basically the same human characteristic as stubbornness.

n46. Generally, virtues related to cooperation (patience, generosity, loyalty, interdependence, empowerment) became associated with women, and virtues associated with competition (assertiveness, logic, tenacity, hard work, entrepreneurial skill, shrewdness) with men. See Ana M. Novoa, The Removal of Adam's Rib: The Creation and Polarization of Male and Female Virtues, 35 U. Louisville J. Fam. L. 755 (1997). It is unclear when the cults of Domesticity/True Womanhood and of the Self Made Man emerged but most commentators seem to agree that they were both well entrenched by the middle of the nineteenth century. See Coontz, supra note 2, at 63; Demos, supra note 3, at 52; Arlene Skolnick, Public Images, Private Realities: The American Family in Popular Culture, in Changing Images of the Family supra note 3, at 297, 306.

n47. See Weitzman, supra note 43, at 182.

n48. Femininity and masculinity are not mutually exclusive traits that exist on a linear continuum, where possession of one necessarily diminishes the other, rather any individual may, for example be both assertive and passive, demonstrating one or the other as the situation requires, with a freedom and flexibility that is unavailable to a strongly sex-typed individual. See Sandra L. Bem, The Measurement of Psychological Androgyny, 42 J. Consulting & Clinical Psychol. 155 (1974); Weitzman, supra note 43, at 182.

n49. See Kaufman, supra note 39, at 360; Weitzman, supra note 43, at 157-159.

n50. Kaufman, supra note 39, at 358.

n51. See S.M. Miller, The Making of a Confused Middle Class Husband, 2 Soc. Pol'y. 33 (July/August 1971); Catherine Ross, The Division of Labor at Home, 65 Soc. Forces 816, 829 (1987). Economist Victor Fuchs observes, "It is only the extraordinary woman who can succeed in a demanding career while doing full justice to the needs of a spouse and children. Most men have never even tried." Fuchs, supra note 39, at 61. In describing the results of a 1987 study, on the division of labor in the home, the author wrote, "although the possible range of this index is 1 (wife always does the housework) to 5 (husband always does the housework), the actual range is from 1 to 3 (housework shared equally). Only one husband out of 680 actually usually does the housework." Ross, supra, at 824; see generally Ruth Sidell, On Her Own: Growing Up in the Shadows of the American Dream (1990); Ruth Sidell, Women and Children Last: The Plight of Poor Women in Affluent America (2d ed., Penguin Books, 1992); Abrams, supra note 38, at 474; Michele Hoffnung, Motherhood: Contemporary Conflict for Women, in Women: A Feminist Perspective, supra note 39, at 124.

n52. Women earn less than men do. They always have. Fuchs reports that while Cleopatra was the absolute ruler of Egypt, men earned twice as much as women. In
the mid-1980s women's wages reached an all-time high, when the average "woman earned... two-thirds as much as the average man for each hour of work." Fuchs, supra note 39, at 49; see also Sidel, On Her Own, supra note 51, at 170-81. Currently, women earn 74% of what men earn, according to the Bureau of Labor Statistics. Bureau of the Census, U.S. Dep't of Commerce, Current Population Reports: Table D (Mar. 1994). But according to a salary survey conducted by Working Woman, the percentage is higher (85% to 95%) in some fields. See Diane Harris, How Does Your Pay Stack Up, Working Woman, Feb. 1996, at 27. In a report on the top earning women executives, it was reported that of the women on the list, fewer than half "occupy the top spot at their company" and even worse, that a total of 615 men on the Forbes ranking of CEOs earn "more than the 20th person" on the list. Katherine & Richard Greene, The 20 Top Paid Women in Corporate America, Working Woman, Feb. 1996, at 44. Ruth Sidel reports that the median income of women, among physicians, was just over half that of men, in 1986. The number of women entering the medical profession is increasing, but they tend to choose specialties with regular hours, or that have strong doctor-patient interaction, they also work fewer hours, and see fewer patients than men. Sidel, On Her Own, supra note 51, at 171-73.

n53. Hoffnung, supra note 51, at 125.


n56. See Bradwell, 83 U.S. at 139-42 (Bradwell, J., concurring).

n57. See Ann Douglas Wood, "The Fashionable Disease:" Women's Complaints and Their Treatment in Nineteenth Century America, 4 J. Interdisc. Hist. 25-52 (1973). "Books written in the period between 1840 and 1900 consistently... assert that a large number, even the majority of middle-class American women, were in some sense ill." Id. at 26.

n58. "Ill health in women had become positively fashionable and was exploited by its victims and practitioners as an advertisement of genteel sensibility and an escape from the too pressing demands of bedroom and kitchen." Id. at 27.

n59. "The hegemony of the upper-class WASP image is still very much a part of our symbol of success and belonging and legitimate authority in this society." Sidel, On Her Own, supra note 51 at 74. There is a well founded assumption that "the public equates progress for black women with imitation of white women. Because being black is an occasion for oppression, avoiding blackness and its attached cultural associations becomes the essential mechanism of liberation." Paulette M. Caldwell, A Hair Piece: Perspectives On the Intersection of Race and Gender, 1991 Duke L.J. 365, 391.

n60. Caldwell, supra note 59, at 394.


A popular mythology about Black women,... was the character of Jezebel, a woman governed by her sexual desires. The ideological construct of the licentious legitimated white men's sexual abuse of Black women and defined Black women as the opposite of the ideal mother. Jezebel contradicted the prevailing image of the True Woman, who was virtuous, pure, and white.

Id. at 11, 12.


n63. Id. at 820.

n64. "Use of the term individualistic to describe men's nature became acceptable only in the same time periods, social
classes, and geographic areas that established the cult of domesticity for women." Coontz, supra note 2, at 53.


n66. Coontz, supra note 2, at 54.


n68. Public and private are used to describe two different dichotomies; first, the distinction between the private/female/home and the public/male/market and political spheres; and second, between the public state, and the private civil society.

n69. See Coontz, supra note 2, at 64. In fact, upper and middle-class families are not and never have been independent and self-reliant, they have received and continue to receive considerable subsidies. See also id. at 72-73, 84; Martha Fineman, Masking Dependency: The Political Of Family Rhetoric, 81 Va. L. Rev. 2181, 2205-06 (1995).

n70. Demos, supra note 3, at 53.

n71. See Coontz, supra note 2, at 55-67; Demos, supra note 3, at 53; Skolnick, supra note 46, at 304-07.

n72. Skolnick, supra note 46, at 306-07.

n73. Laslett, supra note 9, at 246; see also, Skolnick, supra note 46, at 305-07.

n74. See Coontz, supra note 2, at 60-67, 172, 175-78.

n75. Bellah, supra note 67, at 111.

n76. Id.

n77. Id. at 55-84.

n78. Professor Putman concludes that "many major civic organizations have experienced a sudden, substantial, and nearly simultaneous decline in membership over the last decade or two." Putman, supra note 65, at 70. He further points out that many of the organizations that showed an increase in membership (such as the Sierra Club and AARP) provide no social connectedness, in that the members have little or no contact with each other. Id. at 70-71.

n79. Glendon, supra note 65, at 674.

n80. See Sidel, On her Own, supra note 51, at 101-02; David E. Stannard, Changes In The American Family: Fiction and Reality, in Changing Images of the Family, supra note 3, at 83, 88.

n81. As Stephanie Coontz said, "By the late nineteenth century, political economists realized that the ethic of hard work and self-restraint that had helped to industrialize America had serious drawbacks now that most industries had the capacity for mass production. If everyone deferred gratification, who would buy the new products?" Coontz, supra note 2, at 169-70.

n82. Id. at 169-73.

n83. An economy of abundance, like that in the United States in the early part of this century, "cannot count on any reserve of demand... (having already) appeased most... necessities. It can all too easily produce more than what most of its members, left to their own unaided imaginations, might consider amenities. It must therefore stimulate appetites relentlessly." Michael Zuckerman, Dr. Spock: The Confidence Man, in The Family in History 192 (Charles E. Rosenberg ed., 1975). In recent years, "Americans have been taking on credit faster than their incomes have risen" resulting in a steady increase in personal bankruptcy filings. Fred R. Bleakley, Personal Bankruptcy Filings Are Soaring, Wall St. J., May 8, 1996, at A1; see also, Vicki Vaughan, Credit Cards Blamed for Bankruptcy Rise, San Antonio Express-News, Jan. 10, 1997, at 1E.

n84. See Sidel, On Her Own, supra note 51, at 180, 191.

n85. See Coontz, supra note 2, at 170.

n86. Id. at 171.
n87. Id.
n88. Id. at 176.
n89. See Sidel, On Her Own, supra note 51, at 96, 99.
n90. The message of advertising aimed at women is that "the American Dream is alive and well. If you work hard, believe in yourself, and consume relentlessly, you too can be a success in America." Id. at 101.
n91. See Coontz , supra note 2, at 170.
n92. Id. at 171.
n93. Id. at 174.
n94. Television, computer games, and the new virtual reality games all provide individual recreation, and are "disrupting many opportunities for social-capital formation." Putman, supra note 65, at 75.
n95. Bellah, et al. report that "the alternative idea of work as a calling is conspicuously absent" and therefore work is valued "in terms of what it yields to a self" so that the "self stands apart from what it does, and its commitments remain calculated and contingent on the benefits they deliver." By contrast a calling requires the giving of oneself in a commitment to the work and the quality of the work, so that the self is anchored "within a community practicing" the skill. Work as calling "connects the self to those who teach, exemplify, and judge these skills. It ties us to still others whom they serve." Bellah, supra note 67, at 68.
n96. Coontz , supra note 2, at 175.
n97. Sidel, On Her Own, supra note 51, at 96-97, 99.
n98. Francisco Valdes argues that because the American promise of liberty and equality "was intended only for the privileged, the scourge of non liberty/inequality became embedded in the nation's heart and soul." Further, dominant forces in the United States sought to "exclude "minorities' from the liberty and equality that they enshrined as principal values of the new nation." He concludes that "the Constitution's design included defects that, because they were of a fundamental nature, have generated acute and continuing tensions throughout the nation's history." Francisco Valdes, Diversity and Discrimination In Our Midst: Musings On Constitutional Schizophrenia, Cultural Conflict, And "Interculturalism" At The Threshold of A New Century, 5 St. Thomas L. Rev. 293, 296-305 (1993). Judge Higginbotham makes a similar argument. Higginbotham, supra note 7, at 371-89. He wrote: "If the authors of the Declaration of Independence had said - "all white men are created equal' or even "all white men who own property...' they would have more honestly conveyed the general consensus." And, later, "The irony of the unfulfilled American dream of equality is that of all those... who have sought... [a] just society, none had to seek out alien sources for moral authority..." unless, of course, they are women. Id. at 384.
n99. And yet, Paulette Caldwell recently wrote:

Black women cannot wear their hair in braids (in the work place) because Hispanics cannot speak Spanish at work. The court cedes to private employers the power of family patriarchs to enforce a numbing sameness, based exclusively on the employers whim... Like Rogers, the Garcia case is a fascinating study of the extent to which antidiscrimination law perpetuates the allocation to employers of a kind of property right in the person of women and minority employees.

Caldwell, supra note 59, at 380.
n100. Economist Victor Fuchs, in Women's Quest for Economic Equality, concluded that "the economic well-being of women as a whole (in comparison with men) did not improve..." since 1960. He further found that although the "women/men ratio of money income almost doubled,... women had less leisure while men had more,... women [were more] dependent on their own income, and women's share of financial responsibility for children rose...." Fuchs, supra note 39, at 76.
n101. In discussing women in the professions in On Her Own, Ruth Sidel quotes about doctors: "The male model is
the working model" Sidel, supra note 51, at 172; about lawyers: "it is no coincidence that so many women lawyers are unmarried and so few have children." Id. at 174; about other professionals: "The deck is stacked against women... Unless somebody acts like a man, she is not perceived as management material." Id. at 175. But see Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (if a woman exhibits characteristics that are too aggressive, such as using foul language, and being harsh, impatient, and demanding she is equally punished).

n105. See Bem, supra note 48, at 159; see also Sandra L. Bem, Sex Role Adaptability: One Consequence of Psychological Androgyny, 31 J. Personality & Soc. Psychol. 634 (1975).

n106. Luis Rodriguez states:

It's true many of us become "Anglicized" whether we like it or not, but no one fools anybody. This is mostly strategizing one's way in the world... The issue, then, is not to assimilate, but to get rooted again, to honor our ancestors, our rituals, our men and women. To know our real names. Our real languages. To celebrate our diverse histories, stories, tongues, faces, and songs.


n108. Ruth Sidel reports that in her interviews with young women, a "lively, bright, articulate twenty-one-year-old" Mexican-American reported that in school "she had to learn white ways." Another young woman reported that in an effort to escape her outsider status she "tried to be white." Sidel, On Her Own, supra note 51, at 70.
LENGTH: 6700 words

ESSAY: COMPOSING LATCRIT THEORY: SELF-CRITICAL REFLECTIONS ON "LATINAS/OS"

INTRODUCTION: THE TIES THAT BIND
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SUMMARY: If so, doesn't the "Black" preceding "Latino" signify some lesser claim to Latino identity (I've never heard a Latino referred to as a Brown Latino, though I have heard Latinas/os referred to as Brown-skinned)? Doesn't Blackness here function as a qualifier, presupposing an identity that is "just Latina/o?" At any rate, who decides the question of who is and who is not a Latina/o. Who regulates the borders of this identity and by what criteria? Finally, what role does and/or should LatCrit Theory ("LCT") play in representing and giving content to this pan-ethnic, multiracial, multinational, multicultural identity? "Other minorities" becomes a catch-all for people of color who are not Black. But you may be asking, why be binary? Identity is never an either/or proposition. Perhaps I am a "Black Latino." If so, doesn't the "Black" preceding "Latino" signify some lesser claim to Latino identity (I've never heard a Latino referred to as a Brown Latino, though I have heard Latinas/os referred to as Brown-skinned)? Doesn't Blackness here function as a qualifier, presupposing an identity that is "just Latina/o?" At any rate, who decides the question of who is and who is not a Latina/o. Who regulates the borders of this identity and by what criteria? Finally, what role does and/or should LatCrit Theory ("LCT") play in representing and giving content to this pan-ethnic, multiracial, multinational, multicultural identity?

The politics of Latina/o identity formation is enormously important to LCT. After all, LCT has, as one of its theoretical starting points, the notion that la comunidad Latina is meaningful and ascertainable. Thus, part of LCT's political project is to articulate a vision of social justice that responds to and attempts to ameliorate the subordinated status of Latinas/os. Each of the essays in this cluster manifests this political commitment. More than that, the essays raise, and sometimes answer, provocative questions about identity formation and politics in Latina/o communities. What follows is an introduction to, and a brief comment on, each of the essays.

In Who Are We?, Enrique Carrasco probes the question of how LCT might facilitate an understanding of Latina/o identity. He identifies two theoretical approaches that LatCrit theorists might employ. In one approach, the critical theorist situates herself "atop a rooftop." From this location she is able to view the issues affecting the Latina/o community ostensibly from a position of detachment and objectivity.
Carrasco rightly finds this "top-down" approach unsatisfying. His main quarrel is epistemological.

More specifically, he questions whether an objective standpoint exists and wonders whether such a standpoint is even desirable. n5 As a voyeur, how does one understand the specific needs of the community? And as an individual located outside a community, how does one become a representative voice or subject for that community? The rooftop position, in other words, raises serious questions about authenticity. n6

Instead of situating herself on the "rooftop," the critical theorist might locate herself on the "street"-i.e., in the community. n7 The significance of this location is twofold. For one thing, by situating herself in the community, the critical theorist becomes a member (rather than an observer) of that community. For another, her presence in the community plays a constituting role, helping to shape and (re)define not only the community but her own identity as well. n8

Carrasco recognizes, however, that the theoretical position of the "street" is problematic as well. The "street" may be politically constraining, limiting one's ability to imagine possibilities outside of the context-specific realities of community life. Still, Carrasco in [*285] sisists, LCT should reflect and be informed by community-based experiences. As he puts it, "our teleological quests through life - our search for a morally-informed vision of the good life - is, essentially, a narrative informed by communal experiences." n9

Carrasco's preference for community-based and community informed political action is not (for me) controversial. Yet the notion of Latina/o-based political engagements is. As Carrasco observes, "we bring different, sometimes conflicting, viewpoints and agendas to [LCT]. While we might agree that anti-essentialism is 'essential' to critical analysis, the history of division among la comunidad Latina understandably raises doubts about the future of our collective efforts." n10 This observation has profound implications for LCT. To be sure, the fact of difference and tension within la comunidad Latina, does not mean that Latinas/os do not (or cannot) exist as a political community. Few would deny the political existence of the "Black community," even as some of us recognize the ideological, religious, and ethnic diversity within this group. My point here is that Carrasco's comments about intra Latina/o difference, conflict, and division invites LatCrit scholars to continue to probe the political question of what makes one a Latina/o.

Pat Chew's essay, Constructing Our Selves/Our Families: Comments on LatCrit Theory, provides an indication of what is potentially problematic about the category Latina/o through a discussion of her parents' rejection of the Asian-American label (a pan-ethnic, multi-lingual, socially constructed identity). n11 According to Chew, her parents "would view the label as political, and hence undesirable. Second, they would react viscerally, "How can you group me with Japanese Americans?" (My mother recounts proudly how she protested against the Japanese invasion of China). My parents would reject the label "Asian Americans." n12 Chew's parents understand the politically constructed nature of Asian American identity. They understand that, much like Latina/o identity, the Asian American identity conflates distinct cultures - cultures with pre-American experiences and histories, cultures which were and/or are sometimes at war with each other, and cultures which are not easily subsumed under an umbrella identity.

But if Chew's essay reveals why the category Latina/o is racially, culturally, and metaphysically contestable, it also reveals why the category might make political sense. To some degree, our identity is a product of how we experience, and are experienced by, others [*286] ers. One of Chew's shopping experiences helps to explain what I mean:

I was doing my weekly grocery shopping at a large Pittsburgh store. As I was pushing my cart, busily selecting apples - I was oblivious to my Asian-American-ness. That aspect of my identity seemed irrelevant to what I was doing, and I would have presumed "invisible" to me and others. Yet another customer, a well-dressed middle-aged woman, apparently was not oblivious to my ethnicity. She approached me courteously, and asked with a cadence reserved for children and foreigners, "Do-you-know-where-the-milk-is? n13

In this incident, Chew is reminded that she cannot escape her racial signification. That is, she cannot step outside of what her Chinese American identity signifies. She is reminded that her non-whiteness has particular and historically rooted social meanings, one of which is "foreignness."

Significantly, in telling the story Chew does not particularize her racial identity as Chinese American. Chew's narrative suggests that it was her "Asian-ness" that the woman experienced and responded to: "I looked Asian to her, and that apparently triggered an association with 'foreigner' and not understanding English easily." n14 However, had Chew been Japanese or Korean American, the woman would still have employed a "slow cadence reserved for children
and foreigners" to engage her. Undoubtedly, Chew understands this. Indeed, I think it is precisely this understanding that informed (at least in part) Chew's decision to construct herself as an Asian (rather than a Chinese) American in relaying the incident. Presumably, Chew recognizes that while there are indeed differences among people who identify as Asian Americans (as there are with people who identify as Latina/o), the category is meaningful as it is based on an awareness of, and constitutes a response to, the pan-ethnic and racial thematizations n15 of Asian Americans as, for example, foreigners.

LatCrit theorists recognize that the identities we assume and assert are, to some degree, externally imposed. Indeed, as Berta Esperanza Hernandez-Truyol argues in Building Bridges III - Personal Narratives, Incoherent Paradigms, and Plural Citizens, part of LCT's political project is to challenge and contest the external representations of Latinas/os. n16 This suggests to me that it is controversial sial whether, for example, because Mexican and El Salvadorian Americans are treated similarly in American law and social policy and discriminated against in related ways, they should embrace an homogenizing identity label. Put differently, it is not entirely clear that, because these two distinct groups are socially constructed - categorized - as one cultural/racial/ethnic group, they should acquiesce to, legitimize, or reify this categorization through the assertion of an umbrella identity. n17 Perhaps these two groups should organize as a political community against racism and white supremacy, but that is not exactly the same thing as constituting an identity around something other than shared oppression. It is my impression that the assertion of Latina/o identity is more than an assertion of shared oppression (and I don't mean to suggest that shared oppression is an illegitimate or unimportant basis for constituting a group identity). The assertion of Latina/o identity is, at least sometimes, an assertion of values, culture, and history.

Hernandez-Truyol's essay is not intended to give content to the Latina/o identity, however, for she has carefully explored this very difficult issue elsewhere. n18 Her purpose in Building Bridges III is to articulate the interconnections between and amongst subordinated groups. More specifically, her paper "explores bridge building among communities of color with the purposes of creating, maintaining, and developing alliances." n19 Her point of entry into this discussion is a critique of the so-called Black/White Pdigm for conceptualizing race. Under this Pdigm, it is argued, questions of race and racial injustice are conceptualized exclusively or predominantly in terms of Black and White. As a result, the argument goes, Black racial experiences are privileged in discussions about race while the experiences of other racial minorities are marginalized. One linguistic manifestation of the Black/White Pdigm is the phrase "Blacks and other minorities." "Other minorities" becomes a catch-all for people of color who are not Black. This phrase, it is argued, facilitates the construction of Blacks as the Pdigmatic, racially subordinated group.

[*288] I am sympathetic to the concerns that inform the Black/White Pdigm critique. That is to say, I agree with the argument that those of us addressing questions of racial justice in our work - academic and non-academic - should not have as our explicit or implicit starting point the notion that racial subordination and Black subordination are one and the same thing. All of us must struggle with and take seriously the reality that America is multiracial and multiethnic. However, taking multiracial issues seriously does not mean that our discussions about race must always have a multiracial focus. We can, should, and sometimes must racially particularize our political engagements. What taking multiracial issues seriously does mean (at bottom), I think, is that we cannot assume that a Black-centered antiracist practice will ameliorate the racial subordination of other people of color. We cannot assume, in other words, that racism against "non-Black" people of color is related epiphenomenonally to racism against Black people.

That said, I have not always been pleased with the way in which the Black/White Pdigm critique is framed, and I am exploring this issue in another paper. n20 Suffice it to say here that discussions of the Black/White Pdigm should not be employed to suggest, explicitly or implicitly, that America has grappled fully with the nature and extent of racism against Black people. Nor should the Black/White Pdigm critique ignore the social, political, and economic consequences of occupying one end - the negative and subordinated end - of the White/Black polarity.

Hernandez-Truyol's concern with coalition building among people of color raises the question of whether people of color do and/or can constitute a political community. She answers the question (perhaps a little too easily) in the affirmative. She recognizes that there are important differences between and amongst minority groups, n21 but argues that "there are... some fascinating points of convergence." n22 She urges us to consider the ways in which the Black/White Pdigm connects people of color:

Latinas/os and Asian Americans share a lot... in the sense that... both groups are considered neither Black
Hernandez-Truyol presents other examples of how people of color are interconnected, including, but not limited to, experiences with language or accent discrimination and "outsiderness status."

I am persuaded that people of color are connected in the way that Hernandez-Truyol suggests. It is not clear to me, however, that the connections she identifies are a sufficient basis for the constitution of an identity-based political community. Racial, cultural, and ethnic differences amongst people of color continue to trump, or at least obscure, the ways in which their minority status connects them. This might explain why there are very few examples of meaningful coalition building amongst and between people of color - even on college campuses. I want to be careful to point out that I am not suggesting that people of color cannot constitute a political community. What I do mean to suggest, though, is that we cannot hope for meaningful coalition building among people of color unless we explore the ways in which each minority group is differently situated with respect to racism and how this difference corresponds to particular forms of subordination with particular social, economic, and political consequences. This is a hard issue to explore, for it invites us to engage in a discussion about hierarchies of oppression. Nevertheless, I do believe this discussion is one we ought to have - openly and honestly. Hernandez-Truyol might agree with this, at least to some degree. She writes:

In order to promote understanding of the margins, this work proposes that we continuously engage in, and regularly practice, polilocal hermeneutics, a process in which we keep firmly planted holds on all defining aspects of identity and community, in which the sources of knowledge... are "collective, interactive, inter-subjective, and networked." Only by engaging in such multilingual, multicultural, multiracial discourses within ourselves and between and among our various and varied communities... will we be able to understand and work within our cultural, racial, gender, sexuality, ethnic, [and] religious differences...

Hernandez-Truyol's commitment "to promote an understanding of the margins" is shared by Gerald Lopez. In his essay, Learning About Latinos, Lopez stresses the importance of studying, appreciating, and articulating the contours of Latino life. n25 "To really matter, Latinos must be recognized." n26 To be recognized, Latinas/os must be visible. To be visible Latinas/os must move (be moved) be [n290] yond "the shadowy category "blacks and other minorities." n27 And how exactly is this to be accomplished? Lopez suggests that it be done through information dissemination: "We need more novels, more short stories, more plays. We need more telenovelas, more concerts, more feature length movies. We need more histories, more biographies, more memoirs, in print and on the small screen. We need more ethnographies, more surveys, more impossible-to-categorize-but-illuminating accounts of Latino life." n28

But "more is not always better." n29 There are inherent dangers in producing and distributing "more" information about Latinas/os. We have to be concerned about methodology - the way in which information is gathered; the accuracy of the information; the potential (mis)uses of the information; whether the information will expose Latina/o "dirty laundry"; the extent to which the information might undermine a political cause. Lopez recognizes these potential "pitfalls." n30 He argues, however, that they are outweighed by the importance of learning about Latinas/os - "in all our complexity." n31 Rather than avoiding or "denying the hazards we perhaps inevitably confront in producing and pushing knowledge about Latinos, we should regularly expose them. Instead of running from our own failings in the course of our professional work and everyday lives, we should face them down." n32

That we should acknowledge and confront "our own failings" seems to me entirely right. Nor would I quarrel with the idea that we should expose the potential dangers of distributing information about Latinas/os. Much more controversial, it seems to me, is the notion that the production of knowledge about Latinas/os - "any and all knowledge, "good" and "bad" facts - is a sufficiently important political value to override concerns about the extent to which such information can be appropriated and employed to further subordinate Latinas/os - to "delay, cripple, and even halt the march toward making Latinos matter." n33

"That's just the nature of the beast," n34 suggests Lopez. And indeed, it is. But to say that the production of knowledge carries with it certain risks is not to say that those risks should always and in every context be subordinate to the production and dissemination of knowledge. One ought to engage in a cost/benefit analysis. The nature of the risk might very well outweigh the potential importance [n291] of
distributing the information. After all, the goal is to make Latinas/os matter, not facilitate Latina/o subordination, and it is entirely possible that the distribution of certain information will accomplish the latter.

Engaging in a cost/benefit analysis is not going to be easy, however. As Lopez observes, "we'll never... know exactly how frequently or how much [certain kinds of information about Latinas/o] undermine our collective ambitions." n35 We should be cautious, therefore, about limiting or restricting the flow of information. But nor can we know whether and to what extent the distribution of certain information about Latinas/os will contribute towards making Latinas/os matter. In other words, we will have imperfect information with respect to both the cost and the benefits - the liberating and subordinating potential - of disseminating information about Latinas/os. All we can do, then, is make the best cost/benefit judgments our circumstances permit. History and experience will help us, though we will certainly make mistakes.

That said, I do think that antiracist discourse is too often informed by a politics of respectability, the notion that people of color cannot afford to "air their dirty laundry" or reveal their "dirty little secrets." As a result, certain intracommunity problems (e.g., domestic abuse) n36 are not discussed. Lopez's privileging of information dissemination over the risks incidental thereto is perhaps a response to the politics of respectability. Still, I think he pushes the information distribution point a little too far. We should always be concerned with the potential political misuses of information, and the distribution of information should be subordinate to this concern. In some instances this will mean distributing the information and exposing the potential misuses. In others contexts it will mean suppressing the information.

As an indication of the promises and perils of disseminating information about Latinas/os, Lopez refers to the findings and interpretations of the Latino National Political Survey (LNPS). Ostensibly, the survey reflected Latinas/os speaking for themselves. n37 Lopez suggests, however, that notwithstanding the public fuss and fanfare surrounding the publication of the survey, the "nations's knowledge of Latinos remained rudimentary at best." n38 The media's interpretation of the survey distorted Latinas/os' perspectives on key social policy questions. "Take immigration policy. Survey data [*292] showed significant Latino majorities agreed with the statement "there are too many immigrants coming to this country'... As a result, the LNPS almost instantly became a handy citation for anyone wishing to document Latino support for an assortment of anti-immigration policies..." n39

According to Lopez, there was insufficient evidence to support the idea that Latinas/os favor anti-immigration measures. n40 He rightly argues that agreeing with the statement "there is too much immigration' is not the same thing as endorsing "a proposal to constitutionally obliterate citizenship by birth." n41 Moreover, the LNPS data itself offered another story about Latinas/os and immigration. "Only 7 of 1584 Latinos responding [to the survey] named immigration as the most important national problem; only 15 of 1587 (14 from among the 292 Cubans surveyed) (4.4%) listed immigration as the most important local problem. As both a national and a local problem, immigration ranked far behind "social problems' and "economics." n42 This data was ignored by the media, presumably because it would have undermined the stereotype-breaking data purportedly suggesting that Latinas/os are anti-immigration. n43 Lopez does not "assign a single ideological explanation for the media's [distorted] coverage" n44 of the LNPS, and he makes a point of noting that the authors - themselves Latinos - were implicated in the stories the LNPS was employed to advance. n45

If, as Lopez suggests, we learn very little about Latinas/os from the LNPS n46 - which surveyed 2817 Latinos (Mexican, Puerto Rican, and Cubans) - how are we to learn about Latinos at all? What methodologies should we employ? According to Lopez, there is no single methodology for the production of knowledge about Latinas/os, but as we engage this project, we should avoid "becoming enmeshed in the... sequence of caricatures and counter-caricatures that dominates so much contemporary thinking." n47 Moreover, we should strive to be intellectually and politically honest, allowing our findings to inform our politics and being mindful of and critical about the ways in which our politics inform the interpretation of our findings.

[*293] Finally, with respect to giving content to Latina/o identity, Lopez suggests that we explore not only how language, history, race, and assimilation shape Latina/o identity, but also how citizenship and political community are implicated in the notion of a Latina/o community. Lopez contends that we cannot begin to understand the label "Latina/o" unless we come to terms with the heterogeneous nature of citizenship and the multidimensional nature of identity. It is not inconsistent or particularly remarkable for a person to identify as a Mexican-American in one context, a Latina in another, a Mexican in yet another, and an American in another still. Nor is it surprising that a person might prefer to call herself a Mexican...
rather than Latina. This preference does not negate the existence of a Latina consciousness or community.

But is the assertion of a Latina/o consciousness, identity, and community politically valuable? Should it be encouraged? Each of the preceding essays implicitly answers these questions in the affirmative. In LatCrit y la Des-Colonizacion Nuestra: Taking Colon Out, Luz Guerra answers them with a "maybe." Guerra argues that Latina/o identity is constructed on or around the exclusion and marginalization of Native peoples' histories and experiences. n48 "The term "Latino," Guerra argues, "implies [that LatCrit theorists will take] a [political] path that is non-indigenous." n49 To situate Native Peoples within the Latina/o context is to ignore their pre-colonial history. Guerra raises the pointed question of whether "'Latinoism' [has] colluded with the mythology of Colon-ization to the exclusion of Native peoples?" n50 Her essay implicitly suggests that Latina/o is both a colonized and colonizing identity. To decolonize Latina/o identity, Guerra urges us to explore "our relationship to 'conquest,' 'subjugation,' and to the indigenous peoples of the world through a de-colonized lens." n51 Guerra is not perfectly clear on what she means by this, except to say that we should take our cues from certain Native thinkers. n52

LatCrit scholars need to consider seriously the fundamental question that Guerra's essay presents: Does the assertion of a Latina/o identity necessarily marginalize Native peoples? Asked differently, does the Latina/o identity operate - functionally if not intentionally - on a politics of exclusion? LatCrit scholars have been rigorous about asserting a Latina/o identity in the context of discussions about race, in part to destabilize and call in to question the so-called "Latinoism" [has] colluded with the mythology of Colon-ization to the exclusion of Native peoples?" n53 Guerra wants us to examine whether LCT - an outsider discourse - redeploy structures of subordination vis-a-vis Native peoples.

Guadalupe T. Luna's "Zoo Island:" LatCrit Theory, "Don Pepe" and Senora Peralta, is the final essay in this cluster. n54 Like Guerra, Luna is concerned with exploring the relationship between colonialism and the formation of Latina/o - or, more specifically here, Chicana/o - identity. According to Luna, we cannot understand Chicana/o identity unless we understand the role conquest has played in shaping and defining Chicana/o lives. n55 The general claim she advances is that the law has functioned systematically to subordinate Chicanas/os. n56 She develops this thesis employing cases involving land disputes between "Anglo-Americans" and Chicanas/os. More than illustrating the uneven application of the law, the cases she discusses reveal how judges construct Chicana/o identities in opposition to "Anglo-American" identity - citizen vs. resident; settler vs. dependant worker - n57 to "disenfranchise[ ] Chicanas and Chicanos from their property interests." n58 Luna's essay reminds us that law can (and historically has) function(ed) to legitimize, protect, and preserve white social expectations. n59

Cumulatively, the essays in this cluster suggest that part of LCT's political project must continue to involve defining and redefining Latina/o identity. This makes sense. The project of defining oneself and one's community is liberating, consciousness-raising, and potentially transgressive. These definitions can help us understand that we are more than the social meanings attributed to our identities.

But neither self- nor community definitions are easy. As this cluster of essays reveal, our identities are, on some level, unmanageable - fluid, contingent, and contestable. In the end, we will never be able to articulate a definitive and unproblematic definition of "who we are." This should not immobilize us, however, but rather function as the starting point for our understanding of and theorizing about identity.

FOOTNOTE-1:

n1. I use "just Black" here to problematize the tendency of critical race theorists, including LatCrit theorists, to articulate Blackness as "just" a race. While it is widely recognized that the Asian American community and the Latina/o community reflect the political organization of distinct ethnicities and nationalities under an umbrella identity, few people pay attention to, or even acknowledge, the multiethnic and multinational nature and historical origin of the Black community. Anthony Farley makes the point a little differently:

Blacks, like Latinos or Asian Pacific Americans, are neither an "ethnicity' nor a "race.' We too may opt to consider ourselves an amalgamation of national origins - a "conflation' of national origins. We, especially, have been forcibly thematized as an amalgamation of national origins. What could more cruelly highlight this obvious fact than the Middle Passage? All manner of nations went into the wombs of those terrible ships to be born again "as blacks' after a transatlantic labor-of-hate.


n3. Id. at 333.

n4. Id.

n5. Id. at 333-34.

n6. A related problem with the "rooftop" approach is that it privileges individualistic, rather than intersubjective ways of knowing. "How," Carrasco asks, "could we persuade la comunidad Latina or other communities with which we must interact that, because we've been stationed high above the messy fray of living, we are correct when concluding that activists and scholars are misguided by insisting upon, or not clarifying their position with respect to, the liberal view of a rights-carrying individual as opposed to an intersubjective conception of the self that promotes ethnocultural group rights?"Id. at 332.

n7. Id

n8. See id. at 333 & 336.

n9. Id. at 335.

n10. Id. at 331.


n12. Id.

n13. Id. at 298.

n14. Id.

n15. For a discussion of the ways in which the Blackness is "thematized" to facilitate white race pleasure, see Anthony Paul Farley, The Black Body as Fetish Object, 76 Or. L. Rev. 457 (1997).


n17. On some level, this argument proves too much and could be invoked to raise question about whether the assertion of Black identity, for example, constitutes an acquiescence to and reification of the social constructions of Blackness. More disturbingly, the argument seems to suggest that group-based assertions of identity in response to group based subordination legitimizes (or at least helps to perpetuate) the social constructions of the group, and these social constructions facilitate the group's subordination.


n22. Id. at 324.

n23. Id. at 324.

n24. Id. at 310-11.


n26. Id. at 363.

n27. Id.

n28. Id. at 367.

n29. Id. at 368.

n30. Id.

n31. Id. at 363.

n32. Id. at 369.

n33. Id.

n34. Id.

n35. Id.


n37. Id. at 373.
n38. Id. at 371.
n39. Id. at 375.
n40. Id.
n41. Id.
n42. Id.
n43. Id. at 378.
n44. Id. at 383.

n45. Id. at 383-84.

n46. Lopez maintains that notwithstanding his criticism of the LNPS, it is an important starting point. He adds that the LNPS "remains in some ways underappreciated." Id. at 413.

n47. Id. at 384.


n49. Id. at 353.

n50. Id. at 355-56.

n51. Id. at 359.

n52. Id. at 359-60.


n55. Id. at 340-41.

n56. Id.

n57. Id. at 345-49.

n58. Id. at 340.

n59. See generally Cheryl Harris, Whiteness as Property, 106 Harv. L. Rev. 1709 (1993).
Our focus on this panel is how we construct ourselves. One ostensible way to construct ourselves is to identify the different social roles we assume - as teacher, lawyer, mother, Asian-American. Yet these roles only begin to capture our identities; how we personally interpret and perceive these roles informs us further. In our role as teachers, for instance, do we see ourselves as defenders, victims, aggressors, discriminated against, or those who discriminate against others? Are we social activist - agents of change - or soldiers of tradition? The point is that we do not assume these roles neutrally. We attach judgments and purposes to these roles. For example, do we think that being a victim yields some benefits that makes the victim characterization more attractive? Do we think that being a social agent is inherently positive?

I am sensitive to how we characterize our roles, in part, because of my own background. My parents immigrated from China as young adults, and so a number of Kevin Johnson's comments about immigrant groups resonate with me. There are generational differences that are heightened by one's immigration status: parent immigrants and their non-immigrant children often characterize their roles differently. My parents have strong feelings about some of these roles, and their judgments may conflict with my judgments. Even the label "Asian-American" is one with which they would not identify. First, they would view the label as political, and hence undesirable. Second, they would react viscerally, "How can you group me with Japanese-Americans?" (My mother recounts proudly how she protested against the Japanese invasion in China.) My parents would reject the label "Asian-Americans." Similarly, they would not accept being cast as victims - as targets of discrimination. For them, denial of that discrimination protects them from the reality of discrimination. Similarly, my parents would not attach positive connotations to the label "social agent." Their negative reaction, I hypothesize, reflects their generational perspective and is also linked to how they coped with their immigration status. As immigrants and minorities, they believe you do not become a social agent because you do not want to become so visible. You do not want to argue publicly that you are discriminated against because that would lead to unflattering publicity and other negative social repercussions. It is not a chance worth taking, given
that your family is relying on your steady progress in education and work.

So when I consider how we construct ourselves, I realize there are at least two dimensions to our identities. One is the ostensible roles we play. The second is our value-laden interpretation of those roles and how we cast and carry out those roles.

II. Claims on Our Identities

Given that we assume these roles, and that these roles can be characterized in various judgmental ways - my next inquiry deals with claims. To what extent do we allow these roles and these characterizations to claim us? Of course, I am a mother, law professor, in some ways a leader, in some ways discriminated against - but to what extent do these roles and characterizations shape my identity? How do I sort out the various claims and decide which to emphasize and which to minimize, which to embrace and which to struggle against?

As I sort out these claims, an important part of the process is to understand the external pressures. To what extent will I permit others to impose their claims on my identity? I'm reminded of a past experience. I was doing my weekly grocery shopping at a large Pittsburgh store. As I was pushing my cart, busily selecting apples - I was oblivious to my Asian-American-ness. That aspect of my identity seemed irrelevant to what I was doing, and I would have presumed "invisible" to me and others. Yet another customer, a well-dressed middle-aged woman, apparently was not oblivious to my ethnicity. She approached me courteously, and asked in a slow cadence reserved for children and foreigners, "Do-you-know-where-the-milk-is?"

I looked Asian to her, and that apparently triggered an association with "foreigner" and not understanding English easily. Although I was not "claiming" my Asian-ness at that moment, this stranger was making that claim for me. Individuals, other groups [299] with which we associate, and as I've discussed in some of my writing, even the law and legal history - all make claims on our identities. Students, my law school, and a whole range of professional and community groups ask me to give speeches, be on committees, serve on accreditation teams, etc. Each time this happens, they focus on and target me because of one or more of my characteristics, perhaps because I am an established law professor, and often I suspect because I am a minority and a woman. They are claiming that piece or pieces of my identity.

This reminds me of Margaret Montoya's comments on what she calls our bordered and unbordered roles and identities. She describes how one's White identity meets one's Brown identity and how that boundary can move. I visualize our identity as very fluid. Boundaries not only move, they shift, are amorphous, wiggly, complicated, more defined and rigid in some places, and just beginning to gel in others. The question also arises, who decides how the lines are shaped and where the boundaries are? I am encouraged by a number of the speakers' comments. They applaud the power and freedom we have in shaping those lines, and thus in constructing our own identities. While we cannot totally control what claims others make on us, we can allow ourselves, to even take the initiative in, determining what claims we accept.

III. My Multicultural Identity and Multisensual Identity

This conference has been a learning experience for me in a number of ways. In considering how we construct ourselves, we often study present experiences and recount past experiences. I sometimes write in a personal journal, for instance, as a concrete way to capture these experiences. After this conference, my journal will recall more smells, sounds, music, and touching from my experiences. I will think in more sensual terms, in part because of the way presentations from this conference were made. Recall the earlier presentation on "La Comunidad Latina" set around the kitchen table with the speakers recalling key women in their lives - I could almost smell the food cooking and hear the short hoe hitting the dirt floor. These presentations emphasized the many senses that we can tap when we think about our pasts. Using all our senses helps us to recreate more fully the experiences and the feelings they evoked.

This conference also has reaffirmed some parts of my multicultural self. As the sixth child of immigrant parents from China, growing up in the border town of El Paso, Texas, I took for granted that the world was multicultural. As I youngster, I would boast that I could stand on a high peak in the mountains around El Paso and [300] look out on the horizon - the United States at my feet, Mexico in the distance, and New Mexico over my shoulder.

Within my family, I was taught to speak Chinese and be Chinese. While my parents wanted me to assimilate economically and academically, they did not want me to assimilate socially and spiritually. One of my loving and indulgent mother's taboos was for her children not to date or marry someone who was not Chinese. She believed the shame it would bring to the family and the hardship it would bring me would be unbearable. El Paso has a very small Chinese-American community, so our summer vacations were spent in San Francisco...
and Los Angeles. There we could stuff ourselves with authentic Chinese foods, re-immersing ourselves in an Asian environment - hearing the familiar tones of Cantonese and seeing crowds of yellow faces.

This conference also helped me realize that part of me is "Latina," not by blood but by experience. My family lived in the Lower Valley of El Paso in an area called Ysleta. Cotton fields surrounded our house. Farms dotted the region, typically owned by White families and worked by Mexican migrants and Mexican-Americans. We also had a grocery store very close to the border of Mexico and the United States in an urban, poor, and predominately Mexican and Mexican-American neighborhood called South El Paso. Growing up, it was as common for me to hear Spanish as English. I became part Latina by osmosis, by just living multicultural life.

I reflect upon how my multiculturalism is symbolized. This past holiday season, I visited my parents who continue to live in El Paso. Two things happened that illustrate my multicultural identity. First, my husband noted that my mother uses English words, Chinese words, and Spanish words - sometimes even in the same sentence. What struck me was that he was correct and that I had never really noticed. My family's conversations are interspersed with these various languages, vocally demonstrating the pieces of my cultural identity, including some Mexican-American culture. The second incident deals with food, which some other presenters have indicated can play such an important role in our cultural development. During the holidays, one of our family's festive meals consisted of tamales (both chicken and pork) accompanied by homemade wonton soup. Delicious combination.

These two experiences symbolically capture my growing awareness of the Latina part of my identity. I hope that I am not being presumptuous because this is an overall pleasant possibility for me. Part of this increasing cultural awareness evokes some ambivalent emotions however. In our grocery store, virtually all of our customers were Mexican or Mexican-American, and our workers were [*301] Mexican or Mexican-American. My family was always the "boss." I now realize how little I knew, understood, and in some ways, even cared about our customers and workers. And how little I knew or cared about what they thought of me and my family. Some of these realizations are self-critiques that I am finding useful, but also painful because they highlight how narrow and in what a self-interested way I viewed the world. I am looking forward to expanding my view of who I am and who others are.
ESSAY: BUILDING BRIDGES III - PERSONAL NARRATIVES, INCOHERENT PARADIGMS, AND PLURAL CITIZENS

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SUMMARY: ... In this Essay, I purport to eschew any divisive strategy such as Professor Graglia's and instead propose that the way to empowerment and full participation for communities of color, and indeed for all members of society, is to work together to build coalitions and maintain alliances. ... Such a model permits and facilitates our claims on the social contract and thus, enhances the lives and spirits of persons and communities of color. ... Drawing from such indivisible and interdependent commonalities, this Essay, in three parts, explores bridge building among communities of color with the purposes of creating, maintaining, and developing alliances. ... In the last part of the Essay I will endeavor to build a bridge between and among all communities of color by taking a different look at the Black, Latina/o and Asian/Pacific communities, suggest how much we have in common, and articulate some of our shared stories, histories, truths. ... This also hurts other communities of color who are "blamed" for their own impoverishment - economic, educational, and moral, for their lack of skills attainment, and for not being as successful as others. ...

Because we never had a chance to talk, to teach each other and learn from each other, racism had diminished all the lives it touched... Our young must be taught that racial peculiarities do exist, but that beneath the skin, beyond the differing features and into the true heart of being, fundamentally, we are more alike, my friend, than unalike.

- Maya Angelou n1

The constitution does not provide for first and second class citizens.

- Wendell L. Willkie n2

In recent times, nativist feelings and animus against "others/outsiders" have started to run rampant in a public and clamorous fashion. A country's collective mood is reflected in the prevalent moves toward adopting initiatives that will curtail the exercise and enjoyment of civil, political, economic, social, and cultural rights of persons - citizens and non-citizens alike. Examples of these "populist" movements abound. n3 One is the now infamous Proposition 187 n4 in California which is based on shaky legal ground n5 but strong popular support. n6 The Proposition sought to deny any access to health (except emergency care but including pre-natal and post-natal maternity services), education n7, and welfare benefits to some, though on the face of the initiative, not all, undocumented foreigners. n8 Similar to Prop 187, the federal immigration n9 and welfare n10 "reforms" purport to fix the "immigration" problem by keeping out undesirables and getting rid of "illegals." These federal laws also deny social welfare benefits to citizens and non-citizens alike. n11

One particularly odious example of the attempted tyranny of the so-called moral majority against the rights of an "othered" group is the now formally-declared unacceptable Amendment 2 in
which Colorado citizens succeeded in their "populist" movement to prohibit localities within the state from passing measures to protect sexual minorities. Amendment 2 specifically prohibited any municipality from enacting an ordinance that proscribes discrimination against its gay, lesbian and bisexual population in housing and employment. n12 Even after the pronouncement of illegality from our Supreme Court, the ultimate adjudicator of constitutionality of such laws, n13 the hostility and animosity of the self-proclaimed architects and guardians of our morality and rectitude - who claim not only to be the readers of our moral compass but also to have the ability to set its proper course - has not ceased. Rather, subsequent attempts to pass similar anti-gay/lesbian rights laws seek to test the depth and stability of the legal reasoning that invalidated the Colorado amendment. n14 Indeed, it appears that instead of clarifying the existence of [*306] rights of gay and lesbian persons, the Romer decision has fueled the animus against them.

Certainly, any analysis of the emergence of nativist, racialized animus is incomplete without mention of the prevalent, pernicious attacks on affirmative action that are infecting the country n15 and creating a backlash against the ability of persons of color fully to exercise their participatory prerogatives in all corners of this so-called democratic society from the classroom, n16 to the workplace, n17 from the trenches, n18 to the voting booth. n19 The consequences of these efforts are nowhere as evident as in the composition of law school and medical school classes in the public California universities with the most striking and stark manifestation being at Boalt Hall where only a single Black n20 student enrolled in the entering first year law school class. n21

[*307] In the legal education field, University of Texas Professor Lino Graglia's anthropological and ethnographic musings on the Black and Mexican cultures have come to represent the heart of the anti-affirmative action debate. His now-infamous observations described the Black and Mexican cultures as being ones "that seem[ ] not to encourage achievement [and in which] failure is not looked upon with disgrace," n22 thus, perhaps inferring that failure is expected and even acceptable. These pronouncements while unforgettable, unamusing and uninformed, certainly reflect the widespread, epidemic climate of cultural supremacy that views differences through the lens of stereotypes and myth which are then presumed to be, and are anointed as, truths and objective fact. Unapologetic at, and unperturbed by, the negative reactions to his remarks, Professor Graglia further explained himself stating that while he did not believe that minority students were genetically or intellectually inferior, "there is a cultural factor at work." n23 He simply sought to provide the "least controversial, the most congenial response" to rationalize why such students did not perform en par with White students. Undaunted, the constitutional law professor continued: "It appears to be the case that somehow some races see to it that their kids are more serious about school. They cut less and they study more." n24

In this Essay, I purport to eschew any divisive strategy such as Professor Graglia's and instead propose that the way to empowerment and full participation for communities of color, and indeed for all members of society, is to work together to build coalitions [*308] and maintain alliances. This piece, entitled "Building Bridges III" builds upon two previous works that have wrestled with the theme of cooperation within and between communities. Building Bridges I n25 was the first time I wrote on what could be labeled identity themes. In that work I focused on the Latina/o communities in the United States and, while recognizing, accepting, and embracing our pan-ethnic diversity, I emphasized our common grounds, our merged and shared fields of interests, goals, and languages that would, could, and should encourage and facilitate our working together to build bridges among ourselves with the intent of aiding and promoting our collective conditions vis-a-vis the majority community. n26

In Building Bridges II, n27 I suggested the building of a different type of bridge - one between the global and the local, using international human rights norms to establish our entitlement not only to civil and political rights but also social, economic, cultural and solidarity rights. Such a model permits and facilitates our claims on the social contract and thus, enhances the lives and spirits of persons and communities of color. n28 This second article identified three areas in which our domestic laws failed to provide protection that international human rights norms afford: gender biases, n29 the death penalty, n30 and the panoply of curtailments that some of the referenced state initiatives have effected. n31 The enhanced international protections also include the rights to language and culture contained in human rights instruments but absent in our local jurisprudence n32 as well as some indirect deprivations of the related rights of association and education. n33

[*309] The second bridge proposal coincided with the emergence of the LatCrit movement - a recently denominated tributary of critical thinking and conversations - initiated by Latina/o scholars and their friends just a couple of years ago when some of us were lamenting the absence of Latina/o voices from
Asians, by Afro-Latinas/os, Native/Latinas/os, and Latina/o-built-in commonalties as embodied in, and represented conversations because of their natural interlockings, communities which pave the way for these bridge - one between and among communities of color, are increasingly complex beings, communities, and globalization of our interests, views, and positions. We finally, in Plural Citizens, the Essay proposes a perspective that is not adequate or appropriate for the race-based legal Pdigm are, today imperfect and Incoherent Paradigms, suggests that the prevailing of which I am both insider and outsider. Part II, which I live - all of them my communities; and in all communities with which I intersect and interact, and in my frontiers and familiarize them with my daily travels path in which to position the lectors: to contextualize with readers some cuentos (stories) as a method and alliances. The first part, Personal Narratives, shares purposes of creating, maintaining, and developing bridge building among communities of color with the commonalties, this Essay, in three parts, explores drawing from such indivisible and interdependent knowledges ultimately succeeds in the quest to create a more diverse, inclusive environment. It is a wholly satisfying endeavor, not to mention a daunting challenge, to work towards building a community that values everyone's history, culture and languages. This piece suggests[*310] the building of yet another bridge - one between and among communities of color, communities which pave the way for these conversations because of their natural interlockings, built-in commonalties as embodied in, and represented by Afro-Latinas/os, Native/Latinas/os, and Latina/o-Asians.

Drawing from such indivisible and interdependent commonalties, this Essay, in three parts, explores bridge building among communities of color with the purposes of creating, maintaining, and developing alliances. The first part, Personal Narratives, shares with readers some cuentos (stories) as a method and path in which to position the lectors: to contextualize my frontiers and familiarize them with my daily travels through diverse and varied borderlands; the many communities with which I interact and intersect, and in which I live - all of them my communities; and in all of which I am both insider and outsider. Part II, Incoherent Paradigms, suggests that the prevailing race-based legal Pdigm are, today imperfect and under-inclusive because they force an epistemological perspective that is not adequate or appropriate for the inspection and study of the myriad identity issues permeating present day society and consequently law - from the classrooms to the courtrooms, from the prisons to the boardrooms, from the streets to the bedrooms.

Finally, in Plural Citizens, the Essay proposes a globalization of our interests, views, and positions. We are increasingly complex beings, communities, and societies. In prior works I have proposed that we shift from a myopic single-trait analytical framework to a multidimensional framework that moves those who are most at the margins to the center of identity discourse.

In order to promote understanding of the margins, this work proposes that we continuously engage in, and regularly practice, polilocal hermeneutics, a process in which we keep firmly planted[*311] holds on all defining aspects of identity and community, in which the sources of knowledge and meaning of identity components/community are "collective, interactive, inter-subjective, and networked." Only by engaging in such multilingual, multicultural, multiracial discourses within ourselves and between and among our various and varied communities, where intellectual analysis is grounded in all of our worlds not only part of them, will we be able to understand and work within our cultural, racial, gender, sexuality, ethnic, religious differences with a goal of strengthening and respecting all the pertinent communities, rather than seeking to silence and subordinate some peoples and citizenries in favor of the existing hegemonic hierarchical Pdigm.

I. Personal Narratives

Recently, Maya Angelou explained the voice of her narratives. That account, a description of her writing process, expressions, representations, inspirations, and expositions, helped me understand a lot better what I do, why I do it, and why I do it the way I do. She writes about Black people because that is what she knows. That is her life, her experience, her identity and her community. She continued to explain and expand that observation by underscoring that the anecdotes her poetry and other writings, including screenplays, relate are constituted from her understandings, knowledges, and insights. Her stories are, in the end and in their foundation, stories about people, about communities and societies, about humanity and human nature and all the emotions, feelings, passions and needs of the human spirit. Thus her chronicles, her histories are in essence [*312] stories about and for all of us, simply plaited with her yarn, there for all of us to experience, enjoy, grasp, discover, and learn. The manner, method, and style in which the chronicles are casted and framed simply reflect and resonate her voice. This Essay's objective and aspiration is that different and diverse persons and communities reading my meditations will be able to engage in polilocal hermeneutics to analyze, translate and pronounce, in turn in myriad voices, my hope to form an emancipatory cross and multicultural alliances.
that can and will result in a harmonious and thriving coexistence among us.

Thus the first question that immediately might surface and beg for an answer is: what is her voice? What are the translations, pronunciations, and analyses in which we have to engage? Who is talking to us: the lawyer; the daughter; the sister; the law professor; the friend; the lover; the writer; the woman; the Latina in the United States; the naturalized "American;" the Cuban-born, Puerto Rico-raised exile; the normativa; the outsider? The answer is, and must be, the indivisible amalgamation of those tongues, experiences, knowledges, spaces, times, and places, because all those are my worlds - mundos through which I journey every day - each exposing race, color, ethnicity, gender, nationality, culture, sexuality, and language fronteras that I encounter, travel, and inhabit daily. These complicated mappings are routine excursions for me, representations of the moving in and out of worlds of language and culture; nationality and ethnicity; normativity and outsiderness; privilege and subordination; and race, sex, and sexuality. The outlook, perspective, and positionalities associated with, entrenched in, and intrinsic to such multilingualism, multiculturalism, poli/localities are performed instinctively, unnoticed, subconsciously - without patent, palpable, abrupt changes, but rather fluidly as if one were slowly pouring honey or molasses from one vessel to another.

Yet, in such world traveling, context is defining, constitutive. The course or path I track is related to, and determined by, not only the theme of the chronicle, the journey, the history that we are tracing or designing, but also with whom I am traveling, deliberating. Comfortable chats with Spanish-speaking friends may, unnoticed, flow and mutate gradually into English if the conversation shifts to fields, such as law or computers or diplomacy, where English retains an (unconscious, impenetrable) hegemonic, conquering hold.

At times these transitional passages and transformations may instead be conscious and necessary. They also may have anomalous, hurtful and frustrating consequences. For example, I was born in Cuba, and after a brief eighteen-month sojourn through Miami, lived in Puerto Rico through high school. During this time, and I must confess, during my time in college and law school, I was clueless about the racial/ethnic politics and policies of the United States. Unlike persons raised within the dominant society and whose early experiences with exclusion and derision were part of their formative process, constitutive of their identities, n47 I was wholly ignorant and unaware that I would be considered an "other," an "outsider," once I crossed into the U.S. borders. I was unaware I was considered different simply because of my name, of where I was born, what my mother tongue is, or because of my browness. I attribute my lack of knowledge and comprehension to the fact that, during my formative years, my family existed in an environment where, except for my sex, people like me constituted the norm. We were all Latina/o, spoke Spanish, and as such came in all shapes and colors. Indeed, within our borders we would marvel at the estado unidenses - within these U.S. borders the normativas/os - n48 - who came to our land in largely failed attempts to attain our brownness, the very hue that is a central tenet of our subordinated and colonized status within these fronteras. n49

Growing up normativa there was never a question as to whether I, or the rest of the children like me, were capable, intelligent or deserving of an education. There was never a whisper or an insinuation about whether we would be pushed to our potentials. All my teachers - Mr. Castro, Mrs. Carraquillo, Mr. Garcia, Sister Mary Nadine - always expected me to excel in math, science and languages. They thought speaking English and Spanish was good, and that adding a "foreign language" requirement to the mix, meaning French, was even better. They encouraged us to do our best, and enabled us in overcoming all academic challenges. Contrary to Professor Graglia's suggestion, I never heard, witnessed, or otherwise understood, experienced, or perceived, among all the Latina/o families (immediate and extended), communities, and teachers surrounding me, throughout my life, the most minuscule of hints or whispers that in our culture failure would not be a disgrace, that education was not valued, that achievement was not encouraged, or that we were not competitive in any and all institutions.

[*314] But of course there was the matter of sex. I was supposed to be docile, respectful, quiet, self-effacing, retiring, and domestic in my life. n50 At the same time, I was supposed to be the smartest, the fastest, the strongest in class. Somehow this was never congruent and I rebelled in my tame girl sort of way and eschewed gender-subordination. For example, when mami decided I should start doing chores and that making my bed was a good place to start, but did not require the same of my brother, I simply refused. And the tactic sort of worked - in those days abuela who lived with us and who would make Ernesto's bed, started to make mine, too. Similarly, I insisted that Ernesto and I take turns riding in the front seat of the car with mami y papi, participated in sports, kept up my good grades, kept my pony-tail, climbed trees, and wore hi-tops way before it was the accepted or appropriate thing for girls to do.
But aside from being a girl, I was the norm - until I arrived in this country and suddenly became an "other." I know this now; I did not know it then. I did not know it when I was in law school - although I should have had a clue here and there such as the time when a teacher suggested that course evaluations might provide creditable and believable information if the students were required to state their class rank. This, supposedly, would provide the boundaries between credible and not credible commentators. I could not for the life of me, then or now, figure out what class rank has to do with the ability to critique or evaluate a teacher.

But time has passed and I have learned my civics lesson. I now understand the roadmap of what some perceive is my proper place and space in this society of ours. Yet that knowledge alone does not change or impede journeys in my world nor does it soften the blows associated with them. For example, the first LatCrit meeting, which took place in conjunction with the Hispanic National Bar Association's Annual Meeting, was held in Puerto Rico - the island Pdise where I was raised in an extended, loving family. In order to attend the gathering and hear our presentations, Mami y papi flew down from Miami and stayed with tia y tio - the aunt and uncle who were like my second set of parents. Of course, they got all dressed up - you know how parents are like that - and came to the conference. They were there in the room, so proud. When it was time for me to speak I, imperceptibly to all but myself, traveled a million worlds in a matter of moments. Because mi familia was there, I was forced deliberately, consciously, premeditatedly to choose a language for my presentation. Now remember we were in Puerto Rico, where I was raised speaking Spanish at home - a language that is [*315] still the only one we use in mi familia, in part because my tia y tio do not speak English. To be sure they can get by in a restaurant, or ask for directions, but fluency to understand a speech they simply do not have, or need, as Spanish is the official language in Puerto Rico. So there I was in their home, in their country, speaking at a Hispanic Bar meeting to a room full of Latina and Latino law professors, having had mi familia travel to see me talk about Latinas/os and our communities, unable to use my mother tongue - the language with which they raised me, one that they will understand - for to do so would have resulted in the exclusion of many of my colleagues. I suppose that had I had time to contemplate this dilemma, this language frontera that I faced, I might have opted for delivering the talk in French so that I would have ended up talking to myself, my mom, and perhaps a couple of others in the audience. That linguistic choice patently would have presented to all the point and the pain of exclusion. World traveling is never easy. And I posit it is made even harder by the incoherence of the legal Pdigsms vis-a-vis many of our communities.

II. Incoherent Paradigms

In the United States, the dominant legal Pdigm to analyze race, the apparent essence of difference or otherness, n51 is the binary Black/White Pdigm. n52 This dichotomous approach presupposes that there is only one race: the Black race, n53 and that the aspirational goal is the normative non-raceness of Whiteness. No other reason can explain the outcome in the early citizenship-prerequisite cases studied by Ian Haney-Lopez in which, as he notes, courts simply bend over backwards to show non-Whiteness of all persons other than those who are Anglo-Saxon/Western European. n54

[*316] The predominance of this legal perspective is evident in the reasoning courts have used in analyzing civil rights laws. For example, in studying whether Arabs and Jews could state a claim under civil rights laws, rather than conclude that civil rights laws protect all persons from acts of discrimination, the Court opted to racialize Arab ancestry and Judaism in order to find discrimination against these classes actionable. n55 Thus the racialization of discrimination is so embedded in our legal thinking that instead of stating that a democratic society finds any invidious discriminatory treatment of persons intolerable, our legal system has opted to racialize religion and nationality - two classifications that, to be sure, may coexist with race, meaning Blackness, but are different and apart from it. In the context of such Black/White Pdigm, discrimination against Latinas/os is not analyzed as discrimination on the basis of nationality or ethnicity, or even language. In order to find illegality in certain treatment of Latinas/os, the prevalent model racializes their ethnicity or national origin in order to locate such differentiation on the familiar topography of racial discrimination. As might well be expected, this incoherence has led to anomalous results such as the cases in which a Black Cuban, n56 but not an individual described by the courts as a Caucasian of Cuban descent, n57 was deemed to have stated a prima facie case of race discrimination.

This absurdity is exacerbated if one considers that the various different cultures constitute racial normativity in deeply divergent manners. For example, the Latina/o, particularly the caribe<n~tild>a/o, and the "American" construction and perception of race (and color) are dramatically different. n58 In the United States, driven by its mono-racial perspective of Black as the race, the central, essential, axiomatic Pdigm that
courts religiously accept, believe in, and impose is the rule of hypodescent - the so-called "one drop" rule. n59 [*317] This model dictates that, regardless of phenotype, one drop of Black blood makes a person Black. There is no amount of whitening that can make someone with the proverbial one drop the normative, the one entitled to full benefits of citizenship in society. "The metaphor is one of purity and contamination: White is unblemished and pure, so one drop of ancestral Black blood renders on Black. Black is a contaminant that overwhelms white ancestry." n60

In contrast, caribe<tild n>as/os subscribe to the notion of blanqueamiento, n61 whitening, ironically also a one drop rule of sorts. However, this version of the one-drop rule provides that one drop of White blood starts you on the route to Whiteness, in all events the desirable condition. Indeed it is this rather different perspective that has Latinas/os, who by Non Latina/o White ("NLW") standards are 95% non-White, self-reporting at a rate of 95% to be White. n62 The significant item is that the caribe<tild n>as/os identify by ethnicity and culture rather than by the NLW conception of race. In the Caribbean, the reality of racial admixtures evolved the notion of race into a fluid continuum, rather than the absolute Black-White Pdigm. n63 In the fluid model, the construction of race is imbued with values based upon class, education, economics, and culture. Unlike the dominant Pdigm, the fluid model lacks rigid borders and allows traveling in and out of categories. Outside our communities, with the application of the dominant norm regardless of whether a Latina/o appears White, s/he nevertheless is othered - because of the racializing of his/her latinidad which can be reflected in a person’s name, ethnicity, language, color, nationality, and/or accent. Significantly, and this is something I keep trying to explain to my father to this day, in the United States, within these fronteras, he cannot be White because he is Latino.

[*318] This is not to say that racial discrimination does not exist within Caribbean communities - it does and it often goes unpronounced, or more accurately, it is deemed unpronounceable. For example, we have a "bad hair" test - one that only makes sense in the tropics: if one sits under a ceiling fan and one's hair moves it is "good hair;" otherwise, it is pelo malo. And when someone is acting too uppity - too "blanquita/o" - the comment is "ense<tild n>ame a tu abuela" - show me your grandmother. The unpronounceability of the reality of racism within our communities became patent during one of the talks I delivered and upon which this Essay is based. One young Latina law student approached me and noted that she was rather shocked and could not believe that I dared utter these things about our community in public. While emphatic about her view that each should say/do what s/he believes is right, she was obviously uncomfortable with my revelations and questioned the propriety of such public airing of our "dirty laundry" - insinuating that these notions are best kept quiet, to be discussed only in private, in familia. Certainly, the Latina/o community does not have the corner on the market with respect to the "unwritten rule" that we do not talk about color issues in public. For example, when a professor of color who was describing to a group of colleagues of color a work in progress tackling the issue of color discrimination in the Black and Latina/o communities, they questioned the wisdom of writing on such a topic. n64

I firmly believe that in order to build community and alliances we must resist, thwart, and repel not only the racism confronting our communities from the outside but also the racism, sexism, and homophobia infecting our communities from within. However, the point here is not one of the absence or presence of racism within la comunidad Latina. Rather, the epistemological challenge is that in the prevalent monolingual discourse on race, the master narrative's version of the one drop rule obscures and silences the other languages. The hegemonic story has designed the way race is constructed. n65 For example, while to many Latinas/os it is perfectly understandable that there are dramatically varying hues among siblings, the concept is a strange one for the normativos/as. So a pair of siblings in which one appears to Black and the other appears to Anglo/a is a confusing scenario to the normativas/os that the dominant discourse (dis)solves by rendering both non-White by virtue of one of their non-Whiteness. n66

One dramatic example of the divergent perceptions, understandings, and constructions of race comes from Piri Thomas’ book Down These Mean Streets. n67 The narrator is a second-generation Puerto Rican raised in East Harlem who gets involved with drugs and crime and ends up in prison in Lexington, Kentucky. While he is in the food line waiting to eat and having a conversation with a fellow Puerto Rican inmate, the line divides into two: the Black line and the White line. The main character is engrossed in his conversation and not really aware of, or paying attention to, the division, or the basis for the division. As the line moves, he follows his Puerto Rican friend in line as they continue their chat. Suddenly a guard stops him and asks him, "Where do you think you are going?", shoves him into the Black line and sePtes him from his Puerto Rican brother. This pointedly reflects the imposition of the race order by the master narrative. The prison guard defines the narrator by race and not, as the narrator would have described himself,
by culture or ethnicity. Such alien borderlands which impose an unfamiliar system of identity may lead to great confusion in the subordinated peoples. This is clear in the questions Piri Thomas's character asks himself after his racialization. He questions the foundation of his identity and wonders if the world is really designed along a racial divide; whether he is a person who belongs in the other line; whether his whole life he has been someone other than who he thought he was. To be sure, the character felt ire and rage at the denial of his identity as he perceived it. When a purely racial identity was imposed on him, it led to perceptual dissonance and much confusion. Of course, in a jail in Puerto Rico, he could have followed his hermano puertorriqueño in line. In La Isla they both would have been traveling the world of prisons. In the United States, the journey was in narrowly defined racialized worlds; in his realm, in the spheres and environments familiar to him, he would have taken a different journey.

In sum, the normative's hegemonic construction of race results in the confusion and conflation of race with the different concepts of ethnicity and national origin. Such a model fashions a myopic construct that ethnicizes/nationalizes race and racializes ethnicity/national origin. The few cuentos I have related effectively depict the divide between the different narratives. These silhouettes, and many others like them, emphasize the schism between the Latina/o and NLW realities and imaginations about race. Folks of color in the United States are constructed by rules which, in their own world views, are meaningless, incomprehensible and foreign. Having to travel such pre-defined roads is confusing and causes perceptual dissonance reflected in Thomas's character because the external constitution of our identities is contested and protested by our internal maps. Are we required to understand and assimilate the NLW text of normativity to determine our identities? Do these experiences simply inform us as to how the dominant Pdigm re/constructs and re/presents our identities? Does a difference exist between who we are and the majority's re/vision of who we are, in particular when the dominant construct is the adopted text? The most destabilizing question, but ultimately the one with the greatest emancipatory potential is whether we are not who we think we are but who the dominant Pdigm makes us?

III. Plural Citizens

These questions simply re/present the problematic: so long as we work with and within the adopted normative text, the master narrative, we cede its authenticity and dominance, and our text, knowledge and experience will remain subordinated. So long as the status quo prevails, our voices will be heard only in translation, our language will remain unpronounceable, and the monolingualism of law will reign. Only by building coalitions and maintaining alliances will we be able to develop a model that celebrates our multidimensionality, that maps our multiple journeys, and that makes us full citizens in society.

In this final part, I suggest that our common interests are far richer than our differences, that many of those differences exist solely because of the adoption of the foreign text, and that together we can re/constitute a model that will enable, enhance, and promote our participation within all communities. To do this, we must find our own voices, speak our own languages and write our own histories, journeys, and realities.

The Latina/o and Black communities have identified and articulated common interests in the struggle for civil rights and in the development of legal theories. The interests of Asians/Pacific Islanders and Latinas/os, on the one hand, and of Asians/Pacific Islanders and Blacks on the other hand, however, have been largely perceived and presented as divergent and oppositional. One need only do a mental replay of the Los Angeles riots with the national portrayal of Blacks and Latinas/os looting stores while strongly armed Asian store-owners stood at their storefronts to defend them to get a powerful image of this racial divide. Or alternatively, one can do an instant replay of the affirmative action debate where Asians are presented as the smart, hard-working, deserving minorities who earned rightful places in our classrooms and whose participation is threatened by lower-testing, less industrious, less deserving Blacks and Latinas/os.

In the last part of the Essay I will endeavor to build a bridge between and among all communities of color by taking a different look at the Black, Latina/o and Asian/Pacific communities. The interests of Asians/Pacific Islanders and Latinas/os, on the one hand, and of Asians/Pacific Islanders and Blacks on the other hand, however, have been largely perceived and presented as divergent and oppositional. One need only do a mental replay of the affirmative action debate where Asians are presented as the smart, hard-working, deserving minorities who earned rightful places in our classrooms and whose participation is threatened by lower-testing, less industrious, less deserving Blacks and Latinas/os.

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benefit not only all of our communities within these borders, but global communities that might face similar dilemmas as well.

[*322] To be sure, major differences exist between and among Black, Latina/o, and Asian/Pacific groups. Indeed, one should question whether with the panethnicity of such groups a homogenizing, one-word label for the diverse grouping is even desirable or appropriate. n71 For one, historically there have been dramatically different immigration patterns, as well as enormously divergent reasons for Latina/o and Asian immigrations. n72 Of course, for Blacks the first immigration - slavery - was unique and involuntary. As a result, one of the dramatic differences between mainland African-Americans and Afro-Caribbeans, Asian/Pacific Americans, and Latinas/os is that they do not have any space or geography where they are, in fact, the normativa/o - where they have mapped and designed their own country, history, and culture. However, more recent Black immigrations share common patterns with Latina/o and Asian/Pacific persons who come for work, to better the living conditions of their families, or to escape totalitarian political regimes. One interesting consequence of these changes is that while the panethnicity of Latinas/os and Asian/Pacific groups have been subject of much discussion, n73 recent immigrations have rendered the Black community increasingly diverse. These immigrations include not only immigration from many different African countries and [*323] cultures, but also from the Caribbean countries with cultural heritages as different as Jamaica, Haiti, Cuba, and the Dominican Republic. Such increased diversity increases the commonality and intersection of issues of Blacks with those facing Latina/o and Asian/Pacific groups, such as the right to retain cultural traditions and to speak different languages.

However, groups are vastly different with respect to their abilities to integrate into White communities. Demographic data suggests that Asians have been more successful at integrating into White communities than Latinas/os, n74 although that seems not to be the case for Latinas/os who self-identify as White or those who have achieved proficiency in English language skills and who have highly developed skill levels. n75 Asians appear to be the most integrated of any minority group n76 and may explain the fact that Asians have the highest rate of intermarriage of any outgroup. n77 This however, presents a serious problem with respect to the Black community which, notwithstanding the longest standing of roots is "the group least able [*324] to convert skills into income, least able to convert income into integrated neighborhoods, least able to cross racial barriers to marry. And so, by any measure, the group with perhaps the longest history as "real Americans' has the least access to opportunity." n78

Certainly these differences are significant and not ones that we can or should elide. Yet, our communities can learn to travel these differences by engaging in polilocal hermeneutics so that we can learn, discern, and understand their sources and causes. Such comprehension will allow informed coalitions to emerge, coalitions without the empowerment capacity of which we lose the emancipatory potential of our collective knowledges. This liberatory goal to achieve full participatory citizenship will permit the design and construction of public policies and opportunities that will meet all of our communities' needs, beyond any one community's self-interest.

Moreover, notwithstanding real differences, consider the plethora of similarities, particularly within the problematics of the master narrative. For instance, reflect on the dichotomous Black/White Pdigm. Latinas/os and Asian Americans share a lot in that regard, in the sense that, relationally speaking, both groups are considered neither Black nor White n79 - at least not as the binary concept of race is constructed in this country. n80 In addition, an increasing number of Blacks - ranging from Cuban, Puerto Rican, Dominican, Jamaican, Haitian, and from many African nation-states - do not neatly fit into the infrastructure of a Pdigm that focuses on the common knowledge about skin color and excludes and obscures co-existing realities of culture and language.

There also are some other very fascinating points of convergence - some even that at first blush appear to be points of divergence. Language, for example, plays a salient role in our communities in various ways. For one, language allows community identity. Significantly, within and across the Asian communities, because of its panethnicity and varied tongues, it is ironically the [*325] English language that allows for collective communication. Similarly, Black communities, particularly more recent immigrations, will have to rely on English and its limitations for collective deliberations. On the other hand, within and among the comunidades Latinas the Spanish language plays or can serve that purpose. Nonetheless, we must be mindful that many Latinas/os whose presence within these borders is of long standing, may have, over the years, and perhaps in response to the derision and othering, lost their Spanish language ability.

There is also another interesting twist, a different path, if we consider accents. Accented English is a characteristic of our community's speech that can be used to render us outsiders - our accented English not being erotic or exotic but rather emblematic of our
otherness. n81 In thinking of the Afro-American community and language, the recent uproar over Ebonics reflects at least the normatives’ perception that these native, real Americans have language issues too.

n82

The very otherness or outsidership status is another characteristic that our communities share. Indeed, with respect to the Latina/o and Asian/Pacific communities, not only are we not normative, we are not Black and not White. In addition, we are seen as foreign, alien, not "American." n83 This non-American-ness makes our communities targets of nativistic feelings and initiatives. n84 How many times has one of us, or one of our friends or family member been asked where we are from and been told that "Brooklyn" is not the appropriate answer by the simple follow up of "no, no, I mean where are you from?" Or in unkincler climes, how many times have we been told to "go home" - this incantation frequently uttered if any of us dares be critical of these beautiful and wonderful United States of America. How many times and how may of us have been complemented on "how well we speak English." Certainly, a name like mine is prima facie evidence of my foreignness. To be sure, more recent Black immigrations, including Francophone and Latina/o Blacks, might result in an increasing number of Blacks facing this foreignness plight.

This attribution of foreignness takes us through travels in convoluted paths which emphasize our alien and different status. For example, recall the destabilizing effect the purchase by some private entity that happened to be Japanese-owned of an interest in Rockefeller Center - an "American" landmark - had on our society. There was a near-hysterical reaction and fear about the Japanese taking over, n85 even though such consequences from the isolated purchase of an interest in one building complex is impossible. Significantly, no similar reaction has ever been exhibited toward the much larger ownerships of American real estate by the British. n86 Although Prop 187 is not a sophisticated business deal, its raison d’etre - the elimination from our country of undeserving Latinas/os who are taking American jobs n87 - plays on similar nativistic emotions. Finally, the near hysteria over the Haitian "boat people" - persons simply seeking to come to the home of the free and to escape starvation, disease, and torture imposed by a brutal and repressive regime, reveals similar nativistic animus against a Black population. n88

Moreover, although our immigration narratives may be different with respect to specifics, as well as with respect to their colonial or enslavement roots, there are, it appears to me, similar narratives of exclusion that our communities have experienced. For example, as not White, Blacks, Asians/Pacific Islanders, and Latinas/os were largely excluded from citizenship when Congress restricted naturalization to "white persons." n89 Later immigrations were limited by the presence quotas. n90 As not Black and not White, many Asian/Pacific Americans and Latinas/os could not obtain citizenship even after the prohibition against Blacks becoming citizens was lifted. n91

The immigration context also serves to indicate another large similarity in our communities: they are panethic. Interestingly enough, the appellations of the Asian/Pacific American label refers to a diverse community that includes different histories and languages such as Japanese, Chinese, Korean, Vietnamese, Laotian, Cambodian, Hmong and others. Similarly, Latinas/os are a diverse peoples of many races - something finally recognized in the more recent census categories n92 - and national origins including Mexican, Cuban, Puerto Rican, Colombian, Ecuadorian, and more. Finally, Blacks can be African-Americans with roots in many African states, Afro-Caribbean, and Afro-Latino/o.

Another intriguing commonality is the burden imposed on some of our communities by the model minority myth and its intersection with the recently reignited affirmative action problematic. Asians generally are given this model minority label n93 that has been used to create a wedge between Asian communities and other communities of color - Black and Latina/o. The affirmative action debate suggests that Asians will be harmed by being denied jobs or admission to schools so as to accept other "less qualified" minorities. n94 That divisive label, thinly veiled as a compliment, also has been used to refer to Cubans with the unsavory consequences of creating a wedge between Cubans, on the one hand, and other Latinas/os and Blacks on the other. Such "model minority" labeling has the negative and deleterious effects of denying the reality of discrimination against Hispanic Americans and Cubans and simultaneously legitimizing the oppression of other persons of color. For example, the myth detacts attention from segments of the Asian community that have serious economic and educational disadvantages, like the Hmong peoples. Moreover, this divisiveness allows the race-conscious normatives/as to claim a type of moral high ground by wrapping their nativist sentiments in the blanket of Asian/Pacific American and Cuban worries and concerns. This also hurts other communities of color who are "blamed" for their own impoverishment - economic, educational, and moral, for their lack of skills attainment, and for not being as successful as others. This situation, of course, translates to some communities not being hard-working enough, or not intelligent enough, or not
trying hard enough, or some other mythical pretext that becomes transmogrified into the master narrative's (and popular culture's) incontrovertible, factual truth.

Interestingly, for a long time, Cubans at the University of Florida were not considered minorities; in fact, Cubans themselves objected to such designation. At present, the ethnic/racial classifications for Latinas/os applying to the University of Florida include Hispanic/Black and Hispanic/White. n95 This is significant because while it recognizes some of the racial diversity among Latinas/os, it wholly renders invisible, and itself "others" those in our community with Native/Indigenous roots as they do not clearly "belong" under either existing classification. Such are the dangers of ceding the text to the normative; such are the failings of not engaging in the polilocal hermeneutics that validate all the narratives as spoken in their own voices.

Finally, our communities' views of culture and family as well as stereotypical images of Latinas, Black, and Asian/Pacific women work to subordinate women's roles and lives. n96 For instance, in Latina/o and Asian/Pacific cultures women are supposed to be subservient, submissive, servile, self-abnegating beings whose reason for living is to meet the needs of their families. This is their proper role. Yet stereotypes work to sexualize both Latinas and Asian women so that they are viewed as sexually desirable. On the one hand, there is the prevalent image of the passive, exotic Asian woman, there to please, which is the basis for a lot of the mail-order [*329] bride industry. n97 On the other hand, there is the image of the hot Latina, n98 sure to please, the mala mujer if one contextualizes within the cultura latina. And while Black women have long been seen as strong and independent, they too are viewed as pillars of their families and their image also has been sexualized. n99

Given all these similarities and shared concerns, it is my aspiration that notwithstanding our substantial differences, and without minimizing, obscuring, or eliding these, all communities of color can work together to re/formulate Pdigms and identity narratives in a new, different, positive, inclusive way. Indeed, it is rather puzzling that considering all these Pllelisms we have not been able to build, in the course of our histories within these borders, great, strong, supportive coalitions and alliances.

So I conclude with the challenge to all our communities that we work towards doing just that by engaging in conversations with our hearts and intellects bridging our cultures - by way of the process I have labeled polilocal hermeneutics. There will be successes and there will be stresses. There will be times we personally, or our community, might not identify with the issue or concern before us. But it is that very time, that in order to move forward and ensure that each one of us is the beneficiary of the social contract, even if we do not share or identify with our neighbor's concern we learn about it, understand it, and join forces to solve it. Only then will we be able to be the architects of change that will see all of our communities, all of our children, have access to the health, education, employment, housing opportunities in an environment free from racism, nativism, sexism, homophobia, and fear of difference. Only then will our plural citizenry be a full and equal participant in our society with all the rights and obligations that such status demands, promotes, and deserves.

FOOTNOTE-1:


n3. Modern anti-immigration, anti-affirmative action, anti-welfare movements can only be compared with more classic populist movements of the late 19th century to the extent that they found their greatest strength at the grassroots level. Unlike many of the classic populist movements, modern "populist" movements do not work to secure rights for the underprivileged and under-represented, but, based on nativistic sentiments, attempt to limit the very same. See Sandra L. Jamison, Recent Developments, Proposition 187: The United States May Be Jeopardizing its International Treaty Obligations, 24 Denv. J. Int'l L. & Pol'y 229, 230 (1995) (referring to the "populist movement in California [seeking] to rid the state of its unfortunate Achilles heel, the undocumented alien").


n7. See Plyler v. Doe, 457 U.S. 202, 221 (1982). While the Supreme Court fell short of concluding that education is a fundamental right, the Court did make a strong statement as to the importance of education for an informed and productive society; as a result, and in the spirit of providing all children with an equal opportunity to participate in and contribute towards our democratic society, states cannot exclude undocumented children from the public education system.

n8. The initiative expressly focuses on illegal entry, see 1994 Cal. Legis. Serv. Prop. 187 I (West) ("Therefore, the People of California declare their intention... to prevent illegal aliens in the United States from receiving benefits or public services in the State of California." (emphasis added)), and, thus, at least facially excludes from its coverage those undocumented persons who are present within the jurisdiction based upon illegally overstaying a visa. See Reconciling Rights, supra note 5, at 264-66; Natives, Newcomers, supra note 5, at 1096-97.


n10. See generally Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, 110 Stat. 3009-546 (1996) [hereinafter PRWORA] (restricting access to federal public benefits, including "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit").


n12. See Romer v. Evans, 116 S. Ct. 1620, 1623 (1996) (describing Amendment 2 as "prohibiting all legislative, executive or judicial action at any level of state or local government designed to protect... homosexual persons"); id. at 1628 ("Amendment 2 confounds this normal process of judicial review... The resulting disqualification of a class of person from the right to seek specific protection from the law is unprecedented in our jurisprudence.").

n13. See, e.g., Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816) (holding that the United States Supreme Court is the ultimate arbitor over federal constitutional review over state laws); Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) (granting the Supreme Court power to review the constitutionality of federal law).

As with Colorado's Amendment 2, Cincinnati's Issue 3 has been the subject of on-going court challenges; recently in a case remanded by the Supreme Court for reconsideration in light of the recent Romer v. Evans decision, the United States Court of Appeals for the Sixth Circuit held that (unlike Amendment 2) based on the local scope of the law, Issue 3 is constitutional. Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati, Nos. 94-3855/94-4280, 1997 U.S. App. LEXIS 29076, at *13-14, 20 (6th Cir. Oct. 23, 1997). Opponents of Issue 3 have yet to make a decision concerning possible petition for writ of certiorari, therefore this decision is not final. See Ben L. Kaufman, Gay-Rights Backers Weigh Legal Options, Cin. Enquirer, Oct. 25, 1997, at B5. At the same time, a much different battle is underway in Maine where the Christian Coalition and the Christian Civic League submitted 58,182 signatures in favor of a referendum on the state's new gay-rights law. See Steven G. Veigh, Lawsuit Disputes Anti-Gay-Rights Petitions, Portland Press Herald, Nov. 4, 1997, at 3B. This referendum, should it survive court challenges to the petitions, could prove an interesting test for the future of anti-gay-rights legislation as a recent poll of Maine voters showed that the referendum would fail by a margin of 65% to 28% (with 7% reported as undecided). See Susan Kinzie, Poll Shows Support For Gay Rights, Bangor Daily News, Oct. 30, 1997, available in LEXIS, News Library, Allnews File.

The ability of anti-affirmative action groups to claim true populist status may have diminished following the recent defeat of Houston's affirmative action ban called Proposition A. See Sam Howe Verhovek, Voters Turn Back Affirmative Action Ban Much Like the One in California, N.Y. Times, Nov. 5, 1997, at A24 (noting that with 97 percent of the precincts reporting, Proposition A lost 54% to 46%).

n16. See, e.g., 1996 Cal. Legis. Serv. Prop. 209 (West); Regents of the University of California v. Bakke, 438 U.S. 265 (1978) (banning the use of race-based quotas in medical school admissions); Hopwood, 78 F.3d 932 (banning the use of race-based preferences in law school admissions); Rusty Hoover, U-M Admissions Fight Costly: University Says Defense of Affirmative Action Policy is Worth $1 Million to $3 Million, Critics Call it Waste, Det. News, Oct. 30, 1997, at A1 (discussing recent court challenge brought by two White applicants, and sponsored by the advocates for Cheryl Hopwood - the Center for Individual Rights - and anti-affirmative action legislators, claiming that White applicants were denied admission in favor of minority applicants with "lesser academic records" because of their race).


n18. See, e.g., Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995) (ruling that the use of racial classifications by any federal, state, or local government actor, including as part of public contracting project, requires strict scrutiny analysis).


n20. The word "Black" is used in this piece instead of African-/Afro-American because, linguistically, it is more inclusive of Afro-Caribbeans and Afro-Latinos. Thus, it best serves this piece's specific focus.
n21. See John E. Morris, Boalt Hall's Affirmative Action Dilemma, Am. Law., Nov. 1997, at 4 (reporting that out of an incoming class of 268 students, only one Black student and 14 Latina/o students enrolled at Boalt Hall); Tracy L. Brown, Law Class's Lone Black in Spotlight Cal-Berkeley Sees Effects of Affirmative Action Vote, Dallas Morning News, Oct. 20, 1997, at 1A (noting that minority recruitment is not problematic solely at Boalt Hall; four Black and 26 Latina/o student enrolled at University of Texas Law School - down from 31 Black students and 42 Latina/o students in 1996). Even more striking is the fact that out of the 15 Black and Latina/o students enrolled in Boalt Hall's class of 2000, the single Black student and seven of the fourteen Latinas/os enrolled based on deferred admission. See Morris, supra, at 5. The downward trend in the number of minority students admitted to and enrolled in graduate programs is not limited to the law school environment. See Supreme Court Upholds California Prop. 209, Bulletin's Frontrunner, Nov. 4, 1997, available in LEXIS, News Library, Curnews File (citing a study by the Association of American Medical Colleges which blames the public fervor over affirmative action for the 11% drop in minority applications to 125 accredited medical schools and a 7% drop in the number of admitted minority students between 1996 and 1997).

n22. Wayne Slater, Black, Hispanic Legislators Say UT Professor Should Resign Over Remarks, Dallas Morning News, Sept. 12, 1997, at 28A.

n23. Sam Howe Verhovek, Texas Law Professor Prompts a Furor Over Race Comments, N.Y. Times, Sept. 16, 1997, at A1; see also Wayne Slater, Jackson Urges Boycott of UT Professor, Educator Apologizes, Says His Race Remarks Were "Carelessly Put," Dallas Morning News, Sept. 17, 1997, at 34A ("I did not mean to say that black and Mexican-American cultures do not place a high value on academic achievement. It does appear, however, that there are some groups, subgroups or class differences, for whatever reason, in the amount of time children typically spend at school or on school work.") (quoting Professor Lino Graglia).


n26. See generally, Building Bridges I, supra note 25.


n28. See generally, Building Bridges II, supra note 27.

n29. Id. at 79; See also Global Rights, supra note 11 (arguing that welfare and immigration reforms discriminate on the basis of gender and thus violate international law); Berta Esperanza Hernandez-Truyol, Women's Rights as Human Rights - Rules, Realities and the Role of Culture: A Formula for Reform, 21 Brook. J. Int'l L. 605, 630-50 (1996) [hereinafter Women's Rights] (finding that international legal documents are imperfectly written and incorrectly enforced).

n30. See Building Bridges II, supra note 27, at 73-76.

n31. Id. at 76-79; see also Reconciling Rights, supra note 5, at 264-68 (focusing on human rights violations contained within the provisions of Proposition 187).

n32. See Building Bridges II, supra note 27, at 71-73; see also Reconciling Rights, supra note 5, at 266.

n33. See Building Bridges II, supra note 27, at 78-79; see also Reconciling Rights, supra note 5, at 266-67 (discussing rights to education); Global Rights, supra note 11, (examining the deprivation of the right to association by excluding undocumented students from schools, and the denial of the right to health by refusing other than emergency treatment).

n35. For a discussion of Latina/o diversity see Building Bridges I, supra note 25; Building Bridges II, supra note 27; Indivisible Identities, supra note 34; Berta Esperanza Hernandez-Truyol, Las Olvidadas I - Gendered in Justice/Gendered Injustice: Latinas, Fronteras, and the Law, 1 J. Gender, Race & Just. (forthcoming 1997) [hereinafter Las Olvidadas I].

n36. In the last ten years or so, the genre of critical race theory "has enlivened and transformed critical legal scholarship." Francisco Valdes, Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 La Raza L. J. 1 (1996). For more information about the diversity of the critical race movement and its scholarship, see id.

n37. See Indivisible Identities, supra note 34, at 229 (highlighting "education, immigration, health care, housing, employment, language, voting, crime, domestic violence, welfare reform, xenophobia, sexism, racism, [and] homophobia" as issues common to communities of color which affect full participation).


n39. See generally Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 Cal. L. Rev. 741 (1994) (urging that lessons be learned from the tensions arising from modernism to postmodernism theorizing to the benefit of critical race theory).


n41. The argument can be made that these Pdigms have always been imperfect as they have not been well suited to legal analysis of race and have resulted not in a construction of what is White and what is Black, but rather have had to use default "not White" categories for classes that do not neatly fit within the binary with the legal reasoning that results being, at best, contortionist. See Ian Haney Lopez, White By Law (1996). For a summary of the early cases on the construction of race see id. at 203.

n42. E.g., Borders (En)Gendered, supra note 40, at 923-27; Building Bridges I, supra note 25, at 429-31; Building Bridges II, supra note 27, at 70-71 Indivisible Identities, supra note 34; Las Olvidadas I, supra note 35.

n43. This phrase I am varying and borrowing from Boaventura de Sousa Santos, a Portuguese sociologist and human rights activist. See Boaventura de Sousa Santos, Toward a Multicultural Conception of Human Rights, 18.1 Zeitschrift für Rechts-Soziologie 1, 8-9 (June 1997) (suggesting that for cross cultural dialogue between different knowledges and cultures, i.e., different universes of meaning, that consist of strong "topoi" - "overarching rhetorical commonplaces of a given culture," and "to understand a given culture from another culture's topoi," we need to engage in "diatopical hermeneutics [a concept] based on the idea that the topoi of an individual culture... are as incomplete as the culture itself"; thus the objective is "to raise the consciousness of reciprocal incompleteness to its possible maximum by engaging in the dialogue... with one foot in one culture and the other in another").

n44. Id. at 12.

n45. See id. at 8 ("not all equalities are identical and not all differences are unequal"); id. at 13 ("people have the right to be equal whenever difference makes them inferior, but they also have the right
to be different whenever equality jeopardizes their identity); Women's Rights, supra note 29, at 650-67 (arguing that hegemonic/dominant culture should not be used as a sword to eviscerate counter-hegemonic/subordinate/subaltern cultures but that neither should counter-hegemonic/subordinated/subaltern cultures use cultural rights as a shield to deny or trammel the rights of other included, subordinated communities or groups - such as women, native peoples, or religious minorities to name a few - within that culture).

n46. See Lawrence Van Gelder, Chronicle, N.Y. Times, Aug. 25, 1997, at B2 ("I write about being a Black American woman... However, I'm always talking about what it's like to be a human being. This is how we are, the species to which we belong. This is what makes us laugh, and this is how we fall and how we somehow, amazingly, stand up again.").


n50. For a discussion addressing Latina/o gender attitudes and expectations, see Borders (En)Gendered, supra note 40, at 915-18; Las Olvidadas I, supra note 35.

n51. See Cornel West, Race Matters (1993); Haney Lopez, supra note 41.

n52. See Haney Lopez, supra note 41, at 44 (noting that until 1952 "the White-Black dichotomy in American race relations dominated naturalization law."); Borders (En)Gendered, supra note 40, at 898-902 (examining the impact of the Black/White Pdigm as compared with other racial Pdigrams); Juan F. Perea, Ethnicity and the Constitution: Beyond the Black and White Binary Constitution, 36 Wm. & Mary L. Rev. 571 (1995).

n53. See Barbara Jeanne Fields, Slavery, Race and Ideology in the United States of America, New Left Rev. 95, 97 (May/June 1990) ("One of the most important of these absurd assumptions [that constitute racial ideology in the United States], accepted implicitly by most Americans, is that there is really only one race, the Negro race.").

n54. See Haney Lopez, supra note 41, at 203. Significantly, many cases arose after the prohibition against Blacks becoming citizens was lifted, yet only in one reported case did someone seek to make a claim to citizenship by claiming being Black. See id. at 208 (referring to In re Cruz, 23 F. Supp. 774 (E.D.N.Y. 1938) in which the court held, as Professor Haney reports, that "persons three-quarters native American and one-quarter African are not African.").

n55. See St. Francis College v. Majid Ghaidan Al-Khazraji, 481 U.S. 604, 613 (1987) ("Based on the history of 1981, we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that Congress intended 1981 to forbid...."); Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 617 (1987) ("It is evident from the legislative history... that Jews and Arabs were among the peoples then considered to be distinct races...."). See generally Fields, supra note 53.


n58. See Borders (En)Gendered, supra note 40, at 897-902 (reviewing and comparing the differences in racial perspective between the Latina/o and "American" cultures).


n60. See Gotanda, supra note 59, at 26.


n62. See Statistical Handbook on U.S. Hispanics 2 (Frank L. Schick & Renee Schick eds., 1991) (estimating that approximately 95% of Latinas/os self-identified as White before the 1980 Census began specifically asking Latinas/os about their Mexican/Puerto Rican/Cuban origins).

n63. See Clara E. Rodriguez, The Rainbow People, in Puerto Ricans Born in the U.S.A. (1989); see also Borders (En)Gendered, supra note 40, at 901 (comparing the more fluid racial continuum used in Latin America and the Caribbean with the nativist, absolutist Black/White Paradigm of America). Recently, a number of critical race theorists have written about the problematic of, and have suggested abandoning the binary analysis imposed by, the Black-White dichotomy. See, e.g., Robert S. Chang, Toward An Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 Cal. L. Rev. 1241 (1993); Borders (En)Gendered, supra note 40; Deborah Ramirez, Multicultural Empowerment: It's Not Just Black And White Anymore, 47 Stan. L. Rev. 957 (1995); Frank H. Wu, Neither Black Nor White: Asian Americans and Affirmative Action, 15 B.C. Third World L.J. 225 (1995).


n65. See Haney Lopez, supra note 41, at 49-77 (tracing the historical development of the racial prerequisite for citizenship cases and showing how serendipitously the courts defined and developed and how jealously the courts guarded the concept of Whiteness to conform to their views of what is/should be the "common understanding" of White).

n66. See Rodriguez, supra note 63, at 51; Borders (En)Gendered, supra note 40, at 901-02; see also Haney Lopez, supra note 41, at 27 (noting that "courts constructed the bounds of Whiteness by deciding on a case-by-case basis who was not White"); id. at 51-52 ("'Black' was a generic term encompassing all non-Whites, and thus included Chinese persons"); id. at 56 (Race "from the start... was a cultural construct composed of social values and beliefs synergistically related in a comprehensive worldview, integral to the cognitive perceptions that the Europeans and White Americans had of themselves and the rest of the world.").

n67. Piri Thomas, Down These Means Streets (1967).

both, such as the backlash against affirmative action.”) (footnote omitted).

n69. For example, Richard Delgado is one of the founders of and a leader in the Critical Race Theory movement.

n70. It is obvious that the American Indians and other native peoples also comprise a significant subordinate population. The subjugation of native peoples, however, stems mainly from conquest and colonialism rather than immigration patterns which is at the heart of this Essay. Therefore, natives, although not completely absent in spirit because of the mestizaje of the Latina/o community, are thus beyond the scope of this piece. For literature concerning the discrimination against Native Americans, see generally Robert A. Williams, Jr., “The People of the States Where They Are Found Are Often Their Deadliest Enemies”: The Indian Side of the Story of Indian Rights and Federalism, 38 Ariz. L. Rev. 981 (1996); Robert A. Williams, Jr., Vampires Anonymous and Critical Race Practice, 95 Mich. L. Rev. 741 (1997).

n71. See Rachel Moran, Remarks at LateCrit Theory and Asian American Legal Scholarship: A ComPtive Discussion of Non-White/Non-Black Positionalities Panel Discussion, LateCrit II Conference, (May 3, 1997) (on file with author) [hereinafter Moran].

For me, one of the difficult things is, I think that there is a way in which the use of these terms belies very important internal differences, as well as, intergroup differences. That may be convenient, but ultimately, may be destructive of any public policy initiatives that we will be seeing in a time of demographic transformation... If I am reluctant to consider Latinos[as] as a distinct group with a particular identity which we all understand rather than simply a word that we throw around as a convenient label for a variety of circumstances, then I am particularly reluctant to do so with respect to Asians.

Id.


n73. See Yen Le Espiritu, Asian American Panethnicity: Bridging Institutions and Identities (1992); Borders (En)Gendered, supra note 40, at 923 n.117.

n74. See Bill Ong Hing, Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of SePtism and Conflict in an Immigration-Driven Multiracial Society, 81 Cal. L. Rev. 863, 923-25 (1993) (detailing the differences in the assimilation of Asian immigrants by their nation of origin); Leti Volpp, Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism, 96 Colum. L. Rev. 1573, 1590 (1996) (noting that under the model minority myth, Asian Americans are expected to assimilate); see also Moran, supra note 71.

observers have speculated the Latina/o immigrants fail to assimilate as quickly as other immigrant groups"); Angel R. Oquendo, Re-Imagining the Latina/o Race, 12 Harv. BlackLetter J. 93, 126 (1995) (arguing that assimilation is not an option because "Latinas/os, even if... fully conversant in the dominant tongue and ways, will not be willing to give up their cultural distinctness"). Rachel Moran has noted that:

On the issue of race in the Latino[a] community, it seems quite clear that the evidence demonstrates that Latinos/as who self-identify as white have more contact with others who identify as white than they do as Latinos/as who identify as black. That is census data... With respect to class, there are very significant differences. If you look at the evidence right now for Latinos/as who have achieved English language fluency and high level of skills, there does not appear to be an ethnic tax on their wages. The most privileged Latinos/as are doing quite well, comparable to whites... The least privileged Latinos/as... compared to Asians... pay a higher tax for their lack of skills and language proficiency...

See Moran, supra note 71.

n76. See Moran, supra note 71.


n78. Moran, supra note 71.

n79. See Chang, supra note 63, at 1267-68 (opining that Asian Americans are not covered by the Critical Race Theory which tends to focus on the Black/White Pdigm); Borders (En)Gendered, supra note 40, at 897-902 (detailing ways in which Latinas/os do not fit into a neat Black/White view of race); Ramirez, supra note 63, at 962-64 (exploring differences between racial and ethnic groups to show that there is no single racial minority group); Wu, supra note 63, 248-49 (arguing that minority groups are classified "as white, black, honorary whites, or constructive blacks").

n80. Compare Haney Lopez, supra note 41, at 61 (noting that a federal court in Texas 'admitted to citizenship the "pure-blooded Mexican' applicant, but remarked that "if the strict scientific classification of the anthropologist should be adopted, he would probably not be classed as white"'), with id. at 203 (listing cases that include ones deciding that Chinese, Hawaiians, Japanese, Asian Indians, Punjabis, Afghans and Koreans are not White as well as that "persons half White, one quarter Japanese, and one-quarter Chinese are not White," "persons three-quarters Filipino and one-quarter White are not White... persons half German and half Japanese are not White...").


n82. See, e.g., Tena Jamison Lee, How Can There Be Free Speech if it's Only in English?: The Debate Over Language Rights, 24 Hum. Rts. 10 (Spring 1997) (recalling the resolution passed by the Oakland School Board to treat Ebonics as a second language and the resulting "backlash from the media, policymakers and just about everyone else under the sun").
n83. See Chang, supra note 63, at 1244-45 (recounting personal experiences of discrimination, including an incident where his citizenship was challenged by the border patrol because of his Asian heritage); Borders (En)Gendered, supra note 40, at 907-11 (describing "the prevalent view... in 'American' society of Latinas/os as alien").

n84. See 1994 Cal. Legis. Serv. Prop. 187 (West); Robert S. Chang, A Meditation on Borders, in Immigrants Out!, supra note 5, at 244-46 (demonstrating continued nativistic racism aimed at Asian Americans); Natives, Newcomers, supra note 5, at 1094-97 (reviewing the nativistic intent and effect of Proposition 187).

n85. See Chang, supra note 63, at 1257 ("Nativistic racism lurks behind the spectre of "the Japanese "taking over" which appeared when Mitsubishi Corporation bought a 51% share of the Rockefeller Center...."); Martin Rosenberg, Japan Fades from U.S. Minds, Kan. City Star, Sept. 12, 1997, at B1 (noting that worry over Japanese purchases was based on perception that "as Japan's economic might grew, some say Japan became more arrogant.")

n86. See Ronald L. Hatchett, Let Summit Reveal a "Bush Doctrine," Safeguarding America, Hous. Chron., June 24, 1990, at 4 ("Britain alone owns twice as much property in America as Japan, and over all, the European investment portfolio in America is four times that of Japan's.").

n87. See 1994 Cal. Legis. Serv. Prop. 187 (West); see also supra notes 4-11 and accompanying text (discussing nativist Proposition 187).


n89. See Act of March 26, 1790, ch. 3, 1 Stat. 103 (1790).


n91. Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (1866). But see In re Rodriguez, 81 F. 337, 349 (W.D. Tex. 1897) (admitting to citizenship a "pure-blooded Mexican" but stating that the admission was based on international law, i.e., a series of treaties conferring citizenship on Spaniards and Mexicans after the U.S.'s acquisition of lands in Florida and what is now known as the Southwestern U.S., and observing that "if the strict scientific classification of the anthropologist should be adopted, he would probably not be classed as white").

n92. Gerado Marin & Barbara Van Oss Marin, Research with Hispanic Populations 20 (1991) (noting that the Hispanic label attaches to certain nationalities regardless of race); see also Borders (En)Gendered, supra note 40, at 903-05 (discussing multi-racial aspects of Latina/o population).

n93. See, e.g., Alfred Chueh-Chin Yen, The Diversity Among Us, 19 W. New Eng. L. Rev. 36, 37 (1997) (referring to the model minority image attached to Asian Americans); Somini Sengupta, Academic Progress by Asian-Americans is Found to be Uneven, N.Y. Times, Nov. 9, 1997, at 17 (noting that the model minority image given to Asian American immigrants overshadows the impoverished reality of some).


n95. E-mail from Professor Pedro Malavet to Professor Berta Hernandez (Sept. 18, 1997) (on file with author).

n96. See Borders (En)Gendered, supra note 40, at 912-18 (stating that Latinas are taught at an early age that homemaking and child rearing are proper goals for women); Jacquelyn H. Slotkin, You Really Have Come A Long Way: An Analysis and Comparison of Role Conflict
Experienced By Women Attorneys Today and By Educated Women Twenty Years Ago, 18 Women's Rts. L. Rep. 17, 27 (1996) (citing study of twelve Asian American women which described "their traditional cultural values [as] quiet, humble, modest, retiring, more polite, [and]- respectful").


n98. See Ontiveros, supra note 97, at 265 (describing the stereotypical Latina as "naturally sexual... evoking the image of the "hot-blooded' Latina").

n99. See Regina Austin, Black Women, Sisterhood, and the Difference/Deviance Divide, 26 New Eng. L. Rev. 877, 882 (1992) ("Before and since slavery, black women's supposed sexual promiscuity and licentiousness have been relied upon to justify the sexual exploitation of black women by white males intent upon rape, cheap sex, harassment on the job, or torment on the streets.") (citing bell hooks, Ain't I a Woman 51-67 (1981)).
Who Are We As Employees, Activists, Teachers, Scholars, Lawyers?

With these concerns in mind, I would like to address this panel's theme, La Comunidad Latina/Hispana & Our Work. Specifically, I would like to comment upon the questions we have been asked to address, starting with the first: "Who are we as employees, activists, teachers, scholars, lawyers?"

The question can be interpreted in various ways. Figuratively speaking, one might think that we're being asked to leave the noise and confusion of the streets and to stand - or better yet live - atop a tall building in order to obtain a global view. Only then, when we detach ourselves from the world below, can we gather our thoughts, fix our gaze, and comforted by the apparent objectivity of our position, define the various roles in la comunidad Latina. To the extent we are being asked for a critical response to the posed question, the view from the commanding heights may provide us with the necessary frame of mind and space we need for criticism. 

That view may not be helpful, however. We may have great difficulty persuading anyone that the theory we use by virtue of our detachment warrants epistemological or ontological privilege over competing theories that inform criticism. How, for example, could we persuade la comunidad Latina or other communities with which we must interact that, because we've been stationed high above the messy fray of living, we are correct when concluding that activists and scholars are misguided by insisting upon, or not clarifying their position with respect to, the liberal view of a rights-carrying individual as opposed to an intersubjective conception of the self that promotes ethnicultural group rights?

If the space between the streets and the top of the building is not used for meta-ethically grounded criticism, what utility is there in detachment? Surely an empirical analysis from above is alone of little value to the LatCrit scholar. For instance, to say that there are x number of Latina/o faculty members and students at
the University of Iowa and that we teach certain types of courses and attend various kinds of meetings is a necessary but not sufficient step in the critical enterprise. Moreover, that kind of top-down assessment gives us only simplistic information about the identity of employees, activists, teachers, scholars and lawyers down below.

Perhaps, then, we are being asked to stand on the street or in an office, classroom or courthouse for purposes of the question. In this position, we may be better able grasp the social, cultural, moral, and economic significance of, say, a Latina activist who is organizing a day of the "Brown Flu," a work stoppage, to protest the rising tide of discrimination against La Raza. At the moment we witness the Latina's activism, participate in it, and attempt to explain it in re [\*333] sponse to the "who are we" question, we confirm and re-articulate our identities and thereby our dignidad (dignity) in numerous ways. n5 This would certainly provide us with a richer response, one that avoids issues of ontological or epistemological privilege.

But because we are not on the rooftop, our observations are limited by the immediacy of our vision - by the constraints of our grounded context. When the Latina activist leaves our field of vision, we no longer have any sense of her identity apart from the activism. Our response to the "who are we" question is thus unacceptably narrow, for we don't know who she is apart from her role as activist. Is she a teacher? If she is, how does that role inform her identity as an activist and vice versa? What if she is also a scholar? How does her existence as a scholar affect her "activist" and "teacher" identities? These are the important questions for LatCrits.

So when we are asked, "Who are we as employees, activists, teachers, scholars, and lawyers?", our responses should attend to multiple consciousness within la comunidad Latina, which, as Mari Matsuda observes, "produces sometimes madness, sometimes genius, sometimes both." n6 This approach requires us to focus on the dialogical nature of the question. It would be as if we could ask the Latina activist, "Who are you as an employee, teacher, scholar, and lawyer?"

Her response might be, "I am an employee of the University of Iowa. When I attend an alumni function where there are very few or no Latina/o lawyers, I may interact as an employee - a professor of law - of the university. But when I attend a minority recruitment function, I am a Latina employee of the university who can share my experiences and observations as a Latina with prospective law students. n7 My activism is partly enabled through my identity as an employee of the university, whether manifested in my work with Latina/o students at the university or in my activities with the Midwest Consortium of Latino Research. n8 When I teach contracts and international finance and development, the many perspectives and frameworks I bring to arguments and questions include those relating to my experiences and outlooks as a Latina employee/employee, Latina activist/activist, Latina scholar/scholar, and Latina lawyer/lawyer."

[\*334] Now, her response no doubt nurtures her identity in some private, intimate sense. And the dialogical process is critical to her formation of identity, for as Charles Taylor has noted, "one cannot be a self on one's own." n9 The Latina activist can only begin to construct her identity, her sense of self, by responding to her interlocutors' questions regarding who she is; she "negotiates [her identity] through dialogue, partly overt, partly internal, with others." n10 Yet it is the public and collective process of responding to the "who are we" question that provides us with the most useful mechanism for defining la comunidad Latina. n11 The ensuing public conversation creates a common space, via "webs of interlocution," n12 that is critical to our self-understanding. Meaning and our interpretation of meaning are thus intimately tied to the language generated within the common spaces of community. n13

It is through this process that we address the limited vision relating to our grounded positions. True, the view from the rooftop may be spectacular, given the breadth of the global view. But through the common space constructed from our responses to our interlocutors, we can create a Diego Rivera-like mural of la comunidad Latina, which projects multiple identities within an over-arched representation of justice. In this way we can construct a rich and equally spectacular vision from ground, a vision many of us need to go forward.

II.

What Are Our Visions, Hopes, and Practices?

My references to vision lead to another question the organizers have put to us: "What are our visions, hopes, and practices?" The references to visions and hopes may strike post-modernists among us as quaint at best and dangerous at worst. For in our post-Hegelian world the visions we hold are contingent and, if we look closely enough, fractured and incoherent. Hope may be hard to sustain under such circumstances.

I hope, though, that LatCrits will not abandon modernism's emphasis on principled struggle for human liberation. La comunidad Latina has sustained itself on the convictions that principles matter and that
human liberation is worthy of a good fight. Having said [*335] this, I don't believe we should make much of the distinction between modernism and postmodernism in this context. As Richard Rorty has argued, by showing us the contingency of our language, beliefs, and institutions, postmodernism provides us with the freedom to redefine ourselves as our conversations evolve. n14 We can do this and still agree on public principles, such as solidarity and the condemnation of cruelty. n15 Put in the LatCrit context, we can continue to recognize the importance of a principled struggle for human liberation by encouraging what Frank Valdes has called post-modernism in this context. As Richard Rorty has argued, by showing us the contingency of our language, beliefs, and institutions, postmodernism provides us with the freedom to redefine ourselves as our conversations evolve. n16

This discourse is manifested, of course, through practices, which define, and emanate from our communities. Our teleological quests through life - our search for a morally-informed vision of the good life - is, essentially, a narrative informed by communal experiences. n17 Returning to our Latina activist, her narrative has taken her from the ethnic streets of Chicago, to the mestizo communities of the Ecuadorean highlands, to black culture in the Deep South, to various academic and legal cultures in the United States, to her current academic setting in Iowa City. Her narrative has thus shaped her visions, hopes, and practices and informed her moral (but contingent) framework relating to justicia, dignidad, y comunidad.

II.

What Are Our Strengths and Weaknesses? Can Or Should LatCrit Theory Affect Our Current Work Lives?

This brings me to the organizers' last questions: "What are our strengths, our weaknesses? Can or should LatCrit Theory affect and enrich our current work lives?" I will address the latter question first, for it poses a very interesting dilemma. I'm persuaded by what I have witnessed at these meetings that LatCrit Theory enriches us as employees, activists, teachers, scholars, and lawyers, for the process of producing the scholarship can be cathartic and liberating. Through that process, we can begin to provide ourselves with answers to the question, "Who am I?"

But what is beyond that cathartic point, beyond our personal moments of liberation? Does theory enrich us beyond that point? [*336] I'm not so sure that it does. I'm afraid there's a huge risk that we will become trapped by our own answers - by the LatCrit Theory we've so enthusiastically created. In other words, because it evolves from the subject position as informed by the community, LatCrit Theory is ineluctably bounded. We inscribe ourselves into a Kuhnian Pdigm where the pressure to conform is great.

n18 Progress is therefore stymied because of the lack of critical self-evaluation regarding our strengths and weaknesses. It would be as if our vision of la comunidad Latina were limited to the Diego Rivera-like mural; after a while the mural would lose its vitality and perhaps stifle us.

What to do? Deconstruction comes easily to mind. Although that technique of critical analysis helps clear away the cobwebs that have obscured the true nature of a particular theory or position, n19 it does little to reconstruct a progressive, responsive alternative. We can draw some comfort from the Kuhnian observation that normal scholarly activity will itself bring about Pdigm changes through the identification of anomalies that can't be reconciled with the Pdigm. n20 The anti-essential nature of the LatCrit project may provide us plenty of anomalies to keep us intellectually sharp and critical. Put in Valdes' post-modern framework, an "intra-Latina/o politics of difference and identity" n21 and a construction of "politicized identities" n22 may help us keep the "critical" in LatCrit Theory.

Whichever way we look at it, the key to ensuring the vitality of LatCrit Theory lies in our ability to evaluate it, using standards that are independent of our private desires and preferences. We have to have some publicly justifiable mechanism by which we can effectively determine whether LatCrit Theory helps us form workable and just conceptions of the good life for our communities.

Ascending to the rooftop to find standards based on objective truth won't help us much. I suspect that none of us want to spend our precious time arguing over metaphysics. So we return to the streets. As Taylor has argued, the community provides an evaluative framework for providing an independent, ontological account of our moral responses. n23 When we respond to the "who am I" question, we are doing much more than describing private attachments or preferences. Rather, in Taylor's words, "my identity is defined by the commitments and identifications which provide the frame or horizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose. In other words, it is the horizon within which I am capable of taking a stand." n24

In sum, LatCrit Theory can enrich la comunidad Latina. In Walzerian terms, we are "connected LatCrits" n25 in the sense that we are critics who live on the streets of a thick moral world. Consequently, our job, our obligation, is to ask ourselves vigilantly and critically, "Who are we?"
FOOTNOTE-1:


n7. See Enrique R. Carrasco, Collective Recognition as a Communitarian Device: Or, of Course We Want to Be Role Models!, 9 La Raza L. J. 81 (1996).

n8. The MCLR is comprised of Midwestern universities committed to supporting Latina/o faculty and scholarship.


n10. Taylor, supra note 5, at 34.

n11. See Taylor, supra note 5, at 37 (describing two levels of recognition, an "intimate sphere, where we understand the formation of identity and the self as taking place in a continuing dialogue and struggle with significant others" and a "public sphere, where a politics of equal recognition has come to play a bigger and bigger role.").

n12. Taylor, supra note 9, at 36.


n15. Id. at 73-198.; see id. at 189 (arguing that "a belief can still regulate action, can still be thought worth dying for, among people who are quite aware that this belief is cause by nothing deeper than contingent historical circumstances.").

n16. Valdes, supra note 2, at 24-31; see Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 Cal. L. Rev. 741, 760 (1994) (proposing "jurisprudence of reconstruction" and suggesting RaceCrits are compelled "to live in the tension between modernism and postmodernism, transforming political modernism in the process.").


n22. Id. at 27.

n23. Taylor, supra note 9, at 16-23.

n24. Taylor, supra note 9, at 27.

INTRODUCTION

The conference organizers have offered a rare, invaluable, and appreciated opportunity to meet with other Latina/Latino professors. I have been asked to comment on my scholarship while keeping in mind two points. Specifically, (a) "my vision" and (b) "whether LatCrit theory affects and enriches my scholarship." The first section offers a brief summary of that vision and the second section provides a short discussion of how LatCrit theory affects and enriches my work. I conclude with two examples drawn from my scholarship.

Part I: A "Vision"

I join other scholars attempting to de-colonize laws that perpetuate our subordinate status within the world economy. Specifically, through my scholarship, I am attempting to document and analyze the condition of Chicana/os in law. For too long has racialized Chicanas/os, but denied it with adverse consequences for Chicana and Chicano communities. As an alternative, LatCrit theory offers some corrective measures. LatCrit theory, nonetheless, is not readily accessible to students in traditional curriculums. This is unfortunate because including the legal experience of outsiders would assist them in their positions of power as political actors, legislators, and others responsible for creating and interpreting law.

In two of my primary teaching fields - property and agricultural law - students examine a vast realm of complex philosophical and analytical commentary. Yet the property jurisprudence of Chicanas/os remains primarily absent. The takings cases following the United States conquest of Mexico, for example, delineate governmental actions that betrayed constitutional dictates and long-established treaty law. Biased interpreters of the law disenfranchised Chicanas and Chicanos from their property interests and successfully thwarted Chicana/o land tenure. They set a pattern that continues with rural land tenure remaining essentially non-existent for Chicanas/os. They also offer mystical representations of legal history with no place for Chicana/os.

Similarly, the study of agricultural law omits the rich agricultural and farming practices that occurred before the conquest and are still presently employed. Bio-regionalism and its attendant form of sustainable agriculture, for example, were common in areas of scarce natural resources. Ensuing sustainable agricultural enterprises promoted efficient land use for area residents and acequias (irrigation systems) in New Mexico are still a source of irrigation for area enterprises.

Inaccessibility to the Chicana/o experience in the study of law impacts future legislators and other interpreters of the law, for several reasons. First, students are not

... They also offer mystical representations of legal history with no place for Chicanas/os. Second, inaccessibility of the Chicana/o legal experience defaults future lawyers to skewed interpretations of legal history and distorted jurisprudence that favors the experience of white hegemony. Politicians and others benefiting from positions of power and authority are increasingly promoting race-baiting tactics, obscuring the country's legal history and its diverse, complex origins. Emboldened by LatCrit theory, my scholarship focuses on the historical foundation of this country's legal history. Excluding the historical period expedites a culture in which the politics of fragmentation and divisiveness is promoted and as an alternative, LatCrit offers a reliable and more precise representation of legal history in the United States. It allows us to reclaim our legal history and makes evident the widely diverse and complex origins of the country. ...
exposed to the rich, diverse origins of the country.

n12 Second, inaccessibility of the Chicana/o legal experience defaults future lawyers to skewed interpretations of legal history and distorted jurisprudence that favors the experience of white hegemony. n13 Third, the absence of Chicanas/os in law ultimately relegates their status to the margins of legal inquiry. Within this construct opportunities for change are precluded or minimized, and a legal culture is created in which the voice of outsiders is resisted.

Because the aggregate of the above expediates major detrimental consequences to communities of color, my purpose is to try and challenge the ongoing race, class, and gender oppression existing within our relationship with law.

Next, I will discuss a theoretical framework around which the issues of concern can be framed.

Part II: The Universal versus The Particular

Politicians and others benefiting from positions of power and authority are increasingly promoting race-baiting tactics, obscuring the country's legal history and its diverse, complex origins. This simultaneously subordinates people of color and our communities by disallowing the inclusion of outsiders and the opportunity that fosters and adheres to constitutional dictates.

The race-baiters deny and distort the specific conditions of a subordinate status by claiming a "universal ideal for all" which fails to acknowledge the complex experiences inherent to our communities of color. They struggle to conceal how law was used to racist [\*342] ize and disallow Chicanas/os from equal application of constitutional obligations. Simultaneously, they create exclusive realities that place Chicanas/os outside the legal culture. A theoretical Pdigm based on the world systems demonstrates how the ideology of the conqueror facilitates and sustains inequality systematically. n14 As articulated by Immanuel Wallerstein, assertions of the universal relates to humanity, but in contrast race requires consideration of the specific.

Attacks against affirmative action can illustrate how hegemonic dominant law misrepresents the reality and social condition of subordinate groups in the country. The underlying foundation for restrictionist legislation purports the "unfairness" caused by government preferences based on race and gender. Its backers justify their ideology on grounds that support the universal without regard to the specific. n15 Governmental actors abolishing affirmative action, assert "diversity is not essential to education." n16 Those holding law hostage to their own perspectives manipulate claims of universal treatment. n17 Manipulated ideology in turn creates new cultural realities with harmful consequences for our communities. This approach deems the "impact of racism insignificant and obscures its complex and exhausting nature." n18

As a further illustration, a vast array of public law - characterized as the Doctrine of Agricultural Exceptionalism - privileges the agricultural sector and demonstrates the impact of the ideology of those setting the agricultural agenda. n19 Public law exemptions demonstrate the selective nature of their claims to universal treatment [\*343] and qualifying requirements for public benefits and under what terms. n20 Reference, for example, the self-policing aspect of agricultural committees where committee members who are also agricultural employees vote on subsidy awards to themselves. n21 This aspect of Agricultural Exceptionalism demonstrates Immanuel Wallerstein's assertions that the universal encompasses the treatment of humanity, but race, by way of contrast requires consideration of the specific.

Compare the social and economic conditions of Chicanas/os employed in the rural sector which have long been excluded from beneficial public law. Nonetheless, Chicanas/os have long enriched the agricultural sector by providing labor that expedites food production in the country and increases the sector's wealth. n22 Immanuel Wallerstein provides that considerations of both the universal and the specific contain inherent contradictions that must be examined. Nonetheless, exceptions from labor laws awarded the sector demonstrate the selective nature of universal treatment and creates an attendant subsidy with painful consequences for innumerable agricultural workers n23 - a vast array of public law directly ensuring its status as one of the largest and wealthiest in the country. n24 By contrast, public law directly impacts the rural poor by way of welfare cuts and disallows farmworkers the right to organize for improved working conditions. n25 This manipulation of public law demonstrates a particularly acute example of conquest ideology, laws designed to ensure workers' impoverishment, and making evident a clear case of disPite treatment. n26

[\*344] In challenging the hegemonic legal ideology which espouses to the universal, we arrive to the study of law with a simultaneous focus on the specific with references to race, class, gender, and sex perspectives. LatCrit theory is a tool that enables us to improve the conditions of our communities. With others, I consider it of utility in building a cogent and appropriate Pdigm recognizing ongoing features of law that contribute to a colonized past and that seeks to remain codified with
holdings ensuring Chicanas/os hold a colonized status in the United States. n27

Emboldened by LatCrit theory, my scholarship focuses on the historical foundation of this country's legal history. It seeks to untangle the long chains of causation deriving from the conquest period that continue to impact our Chicana/o communities and to adjoin a more distant past with the present. n28 To do nothing disallows a valuable opportunity to reject the default model predicated on European dominance.

The following cases provide specifics derived from my scholarship.

A. Chicanas/os and The Universal

Prior to the conquest, Mexicanas/os resided on and facilitated estates and agricultural enterprises of varying sizes. n29 They built ranches, farms, and orchards, roads and irrigation projects, and several engaged in trade with foreign markets. After the conquest, an international treaty and constitutional directives obligated the United States, in its contractual arrangement with Mexico, to protect and honor the fee holder interests of its newly acquired citizens. n30 Instead, Chicanas/os were treated as colonized people, with law used to racialize their status. n31 Case law demonstrates how the law was used to disenfranchise and alienate them from their property interests.

Litigation interpreting the Treaty of Guadalupe Hidalgo, n32 shows how Anglo-jurisprudence racialized and, thereafter, caused Chicanas/os to yield to highly discriminatory laws. A long chain of evidence demonstrates that, after the conquest, they sustained irretrievable legal consequences which directly ensured the loss of their property. Challenges by land speculators, squatters, and homesteaders seeking Chicana/o lands turned property owned by Chicanas/os into public property. By the use of law on the basis of the universal, they reduced the treaty to a "mockery of written agreements" which ultimately turned "solemn obligations into writing exercises." n33 Inapplication of constitutional dictates essentially served to further distinguish and separate Chicanas/os from universal application of the law, in essence maintaining features of a colonized population.

B. "Don Pepe" and Se<n>ora Peralta

The following two cases examine the relationship between Anglo-jurisprudence and its treatment of Chicanas/os in defense of their property. n34

1. "Don Pepe:" Luco v. The United States

In Luco v. The United States, Jose de la Rosa claimed ownership to a tract of land in California known as Ulpinas. n35 The case hinged on whether a seal on the granting documents was fraudulent. The Court's characterization of the grantee refers to him as "Don Pepe,' the "household Jester of General Vallejo" "living with the profusion and bounty of semi-barbaric pomp..." At the same time the Court provides that though not actually a servant, yet a dependant of General Vallejo, residing in Sonoma, gaining a precarious livelihood by making and mending clothes and tin ware, acting as alcalde, printer, gardener, surveyor, music teacher, and attending to a grocery and billiard table for Vallejo.

[+346] In the same opinion the court considers the interest of settlers:

There is an interest which in this and many other California cases cannot be overlooked - the interest of bona fide settlers. The Government of the United States contests these cases for the benefit ultimately of that class. It acquires territory, not that it may become and remain a vast land owner, but that the acquired territory may be thrown open to its citizens, for their occupation in moderate quantity, in aid of a public policy...

The rights of such men must be not only respected, but protected by a just Government. They are the people who have carried our laws, institutions, and all that make up an empire, into the wilderness, and subdued it to the purposes of civilization; who, to reach this spot where they were bidden by law, have tempted the dangers of two oceans, or traversed vast spaces of desert, cut off from their old homes by savage mountains and barbarious tribes. They are entitled to regard and protection.

Here there is no equal application of the law. In the instant case, a talented individual, who worked seven jobs that required a range of talent and skill was disPged as a jester.

Yet the Court accepts Anglo-Americans, as a class, as "bona fide" and acknowledges to be operating on their behalf as the universal claimants to "our laws, institutions" and "empire" while specifically excluding a "jester" from the American universe. The Court's concerns demonstrate how law is held hostage to the cultural biases of its imperialist interpreters.
Although the court was convinced that the claim was a forgery, it nonetheless, recognized "the minute differences between the spaces of parts of the objections on the impressions, or of differences in the relative angles of two of three of the letters of the inscription." Notwithstanding various witnesses attesting to the purported ownership by Don Jose de la Rosa, the court relied on the actions of John Fremont, a known instigator of the Conquest, and disallowed De La Rosa's seal by comparing it with Fremont's seals on a non-Mexican document. Not even the testimony that could have been offered by the granting officers and other Mexican officials was permitted and thus, not allowed to save the grantee's claim. n36

Other examples included land held by women.

[*347*

2. Señora Peralta: Peralta v. The United States n37

The rights of the women as they existed before the conquest were also preserved by the Treaty of Guadalupe Hidalgo. n38 Whether through marriage, inheritance, or donative grants, Spanish and Mexican law acknowledged the legal right of women to petition and receive land grants in Mexico's northern frontier.

On appeal to the Supreme Court in 1865, Peralta v. The United States offers an example of women seeking to defend their property. In the instant case, Maria de Valencia, along with her siblings, sought a patent on property they had inherited from their mother Teodora Peralta. Señora Peralta held claim to the property in California from an 1845 grant.

On or about 1843, Señora Peralta, in conformance with the 1828 Colonization Law, and the laws in force in the Mexican Republic, had moved onto a tract in Alta, California. In 1845, according to the law of the Republic, Teodora Peralta petitioned for the tract and sought ownership status. n39 Sevilla Peralta "belonged, it was said, to a well-known and good family, and was a native of the region, with a perfectly fair character." n40 In conformance with Mexican law, Teodora submitted a petition to complete the process. In 1845 she:

petitioned the alcalde of San Rafael to obtain a report from the neighbors or colindantes of the tract which she desired to solicit from the government, in order that the report might accompany her petition to the governor for a grant of the land. n41

The narrative from her appeal confirms that Mrs. Peralta followed the dictates of Mexican law. Her granting documents which she received from the Mexican government established her "expediente" n42 and comprised the essential elements of her claim of possession. The confirmation process culminated with Governor Pio Pico granting Señora Peralta the tract. At this point she was discharged from further action and her claim ensured to her ownership status.

[*348*] According to the Treaty of Guadalupe Hidalgo, Señora Peralta's property rights were "inviolably protected" n43 and obligated the country to "a universal ideal" backed by the constitution as a foundation to her rights as a fee holder. Nonetheless, the government of the United States imposed on her the obligation to demonstrate the "validity" of her property interest, in contradiction of the explicit terms of Article VIII of the Treaty of Guadalupe Hidalgo. n44

In presenting all claims of ownership status of existing ranchos and other tracts, determining bodies and courts declared that the mere possession of documents by claimants, without accompanying reference to those documents in Mexican archives, was insufficient to establish ownership status. To the detriment of Señora Peralta, the Mexican archives contained no record or trace of her petition. According to the Supreme Court, the Board of Land Commissioners determining the "validity" of Señora Peralta's claim admitted that her proof of occupancy and cultivation were satisfactory. n45 Nonetheless, in holding against Señora Peralta, the Board held that, "if the parties had used the proper diligence in procuring the issue of the grant and judicial measurement and formal possession, there might have been no difficulty in the case..." n46 In other words, "in the absence of the issue of the grant, and a segregation of the land, they could do nothing but reject the claim." n47

With the invasion by the United States imminent, the country was in a state of turmoil during the grantees' occupancy of California. n48 Moreover, it is well established that American officials destroyed evidence of granting documents, n49 discarded granting documents, n50 or held documents where interested parties with ill-motives could access them and disallowed access to Mexican grantees. n51 Natural disasters, such as the one in San Francisco in 1851, also affected the ability of grantees to procure their granting documents. n52 Finally, competing homestead and agricultural legislation increased the actions of Euro-Americans seeking Mexican property and kept grantees under intense pressure in defending their property against "jumpers" and settlers. n53 Yet courts disallowed the arguments of Mexican landholders and imposed elusive standards re-written
to accommodate the claims of non-Mexican landowners. n54 Examining the specifics of Chicano/o land tenure and their litigation experiences shows how the law privileges and establishes Pdigms that perpetuate inequality and disPte treatment.

Conclusion

DisPte treatment in law based on the ideology of the universal and stemming from the conquest continues to the present period. Examples range, inter alia, from recycled restrictionist immigration laws, n55 anti-affirmative action measures, n56 English only laws, n57 and welfare reform. n58 Much of the legislation derives its origins directly from politicians and legislative actors who address the public through the use of racial images and stereotypes that are derogatory towards Mexicans and those of Mexican descent. n59 Excluding the historical period expedites a culture in which the politics of fragmentation and divisiveness is promoted and as an alternative, LatCrit offers a reliable and more precise representation of legal history in the United States.

Race-baiters use code words in an attempt to de-emphasize their racial-divide tactics n60 and in light of the present restrictionist construct, LatCrit theory provides innumerable opportunities to expose their actions and provide a link to the past. It allows us to reclaim our legal history and makes evident the widely diverse and complex origins of the country. Its value extends to considerations of the tension and contradictions between both the universal and the specific. It also grants opportunities for future lawmakers and interpreters of law that, to the present, have been harmed by the omission of the country's rich diverse origins from the study of law.

FOOTNOTE-1:

n1. See Tomas Rivera, Zoo Island, in La Cosecha: Cuentos de Tomas Rivera (Juan Olivares trans., 1988). In Zoo Island, Jose a fifteen year old farmworker wakes up "one day with a great desire to take a census" of the farmworker population working on an Iowa farm. Id. at 113. Not unlike Jose, this Conference assists immeasurably in providing a community for Latina and Latino professors too long excluded from the academy. Julian Olivares, in his introduction of the text asserts Zoo Island: "manifests the desire of the Chicanos to exist as a community. The census makes them feel important, counted..." Id. at 79. Enumerating farmworkers is difficult because of the timing of the census which in the past has taken place when the workers are away from their home states. As an alternative to the U.S. Census, see the efforts of the Tomas Rivera Center, Migrant Enumeration, Austin, Texas.

n2. Luco v. United States, 64 U.S. 515 (1858).


n4. The term Mexican references individuals of Mexican birth and descent; Mexican nationals include citizens of Mexico; Chicana/Chicano refers to those residing in the U.S.; and Latina/Latino references Puerto Ricans, Cubans, and those from Central and South America. Terms are used interchangeably with "emphasis on self-designations." Genaro M. Padilla, My History, Not Yours (1993). For an alternative designator, see Ana Castillo, Massacre of the Dreamers (1994) (discussing Xicanisma).


n7. See generally Pico v. United States, 19 F. Cas. 593 (D. C. D. Cal. 1856) (No. 11,128).


n9. Spanish, Mexicans and the indigenous population introduced a number of products, fruits and vegetables - cotton, corn, beans, squash, tomatoes, chili peppers, avocados, chocolate, rodeos, bar-
b-que, grapes, raisins, apricots, peaches, plums, oranges, lemons, wheat, barley, olives and figs - during the extant period. Farming methods and other aspects of the agricultural enterprise remain in use to the present. For example, irrigation water saving systems originating from the Mexican period remain in use, particularly where water resources are scarce. See Devon Peña & Jose Rivera, Historic Communities In The Upper Rio Grande (1995) (unpublished essay, on file with the author).


n12. For example, the historical foundation of property titles derives from the Spanish and Mexican period (community property).


n15. See id.


n17. See Joe Gelman, A Closer Inspection of Connerly's 209 Role, L.A. Daily News, Aug. 3, 1997, at V1. (stating that Ward Connerly, a regent for the University of California and an anti-affirmative action proponent, is "the nation's leading spokesperson against racial and gender preferences" and "has found himself in this position by assuming the leadership of the California Civil Rights Initiative, or what later became known as Proposition 209").

n18. See generally Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other Isms), 1991 Duke L.J. 397. In other words, enrollments of people of color have decreased and are directly tied to the elimination of affirmative action. See generally Karen Brandon, In California, Minority Enrollments Falling At Leading Law Schools, Droppoff Tied To State Universities' Elimination of Affirmative Action, Chi. Trib., July 6, 1997, at A8.

n19. See Ernesto Galarza, Merchants of Labor, The Mexican Bracero Story 106 (1964) (referencing Carey McWilliam's "Great Exception" characterization of the agricultural sector which provides that the exceptions afforded the sector offend the "basic tenets of free enterprise").


n23. See generally Report of the Commission on Agricultural Workers (1992); William K. Barger & Ernesto M. Reza, The Farm Labor Movement in the
Midwest (1994) (documenting the social and economic conditions of agricultural workers outside the legal venue).


n27. See generally Mario Barrera, Race and Class in the Southwest, A Theory Of Racial Inequality (1979) (for literature outside the legal venue).

n28. See Agricultural Underdogs and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. Rev. 9 (1996); Chicana/o Land Tenure, supra note 5; Chicanas, Land Grant Adjudication and the Treaty of Guadalupe Hidalgo: This Land Belongs to Me, 3 Harv. Latino L. Rev. (forthcoming Fall 1998) [hereinafter Chicanas].


n31. Courts regard the class as conquered people. See, e.g., Beard v. Federy, 70 U.S. 478 (1865) ("After our conquest of California...").


n34. The first is adopted from Chicanas, supra note 5.

n35. Luco v. United States, 64 U.S. 515 (1859).

n36. The signature of Pio Pico governor of California was also alleged as fraudulent. Yet he was not called to attest to the validity of his signature. Id.


n38. The instant case is examined in greater detail in Chicanas, supra note 28 (discussing the litigation experience of women defending their property interests).

n39. 70 U.S. at 434-435.

n40. Id. at 435.

n41. Id. The purpose of the petition was to provide notice to the government of Mexico, but also to ensure that the land was vacant and no adverse claims existed that would preclude ownership status.

n42. Spanish word for case file or record. The papers were gathered together and formed the record ("expediente") of her
petition. See generally, United States v. Cambuston, 25 F. Cas. 266, 267 (N.D. Cal. 1859) (No. 14,713). ("these papers stitched together, formed the expediente").

n43. Treaty of Guadalupe Hidalgo, supra note 30, at Article VIII.

n44. See generally Treaties and Other International Acts of the United States of America 262-67 (Henry Miller ed., 1937); In contradiction to the goals of the Mexican Republic, the United States thereafter promulgated a series of major land acts. California Land Act of 1851, Ch. 41, 9 Stat. 631 (1851); Act of Mar. 8, 1891, Ch. 539, 26 Stat 854 (1891), Mar. 8, 1891 (Colorado, Arizona, New Mexico). The land acts required two levels of presentation from individuals holding property. The first required presentations of claims to the adjudicatory bodies to establish the validity of Mexican tracts. See, e.g., California Land Act 8-10. Upon a showing of definitive proof, the United States awarded the recipient a patent. Id. at 13. Failure to submit claims within a two year period defaulted the property to the public domain. Id. To qualify for a patent, each set of land grant laws further obligated grantees to present surveys of the claimed property. See California Land Act of 1851. In submitting to United States surveys grantees confronted a number of collateral attacks from a wide array of individuals seeking access to the country's public lands. See Luna, Chicana/o Land Tenure, supra note 5.

n45. 70 U.S. at 436

n46. Id.

n47. Id.

n48. Historians have long established academic inquiry over the conquest of the annexed territory. Further, United States v. Rocha, 76 U.S. 639 (1860) provides: "The confusion and disorder that existed, in respect to the Spanish and Mexican archives at the close of the war, when the Mexican authorities hastily left the country, has been shown in several cases before this court; and some indulgence is due to an honest claimant as to the order and time in which to produce his evidence." Id. at 647.

n49. See, e.g., United States v. Pendell, 185 U.S. 189 (1902) providing:

In the year 1846, while the original documents of title were in existence in the town of Paso del Norte...the place was occupied by the military forces of the United States, and the original documents of title and the official registry where they were recorded were destroyed by the American forces..." Id. at 190.

n50. United States v. Chaves provides an example of claimants asserting that the state's governor ordered land grant documents be sold or thrown away. 159 U.S. 452, 462-63 (1895).

n51. John Fremont "pathfinder of the West" and long recognized for his involvement in the uprising against the Mexico Republic, while he was a foreign national residing in California Alta, retained custody of land grant materials. Immediately after the conquest he alleged he lost several in the "mountains."

n52. See generally Fuentes v. United States, 63 U.S. 443, 451 (1859) (referring to the "great fire of the 3d and 4th May, 1851," which the plaintiffs claimed destroyed land grant books and other documents vital to their case.)


n54. Compare Se<tilde n>ora Peralta's claim with that of John Fremont. United States v. Fremont, 25 F. Cas. 1214, 1215 (N.D. Cal. 1854) (No. 15,664).


n57. See generally *Yniguez v. Arizonans for Official English*, 119 F.3d 795 (9th Cir. 1997), remanded with instructions to dismiss *117 S.Ct. 105* (1997).


I. Introduction

El panorama de América durante estos últimos quinientos años, y luego de estos quinientos, nos muestra un curioso mosaico multietnico, multirracial y en su conjunto plural, donde el eje de unidad y coherencia esta plasmado en aquello que aparece como herencia de Occidente y que nosotros identificamos como latino-america y anglo-america, en referencia al origen europeo de su existencia, dado que opera dentro de los Pmetros de origen colonial de su patrimonio cultural. Lo que no esta dentro de estos marcos de referencia occidental es llamado indigena. El mundo indigena americano aparece como un archipielago rodeado de Occidente. n1

CARD:<qmarkx>Cual es nuestro ser? ... de hecho solo hay implicitamente una respuesta con la cual identificarnos: el mestizaje. n2

I come to this writing as an activist, not as a legal scholar. I wanted to participate in this discussion because it is one critical to our survival - the survival of the many peoples of this hemisphere. I also wanted - and yet did not want - to join this panel because of the "Latino" context, and because of the questions about the history of the peoples indigenous to the area now known as the United States suggested to the panelists. Therein lies a contradiction: to address the histories of the indigenous peoples of this hemisphere within a "Latino" context (i.e. within a LatCrit conference) without having critically examined the term "Latino" and its relationship to Native history is impossible. And so I attempt to enter this discussion from the juncture of this history. n3

Say, Skin!
Brown-hued soldadera
of urban slum jungles
& rural plantation esclavitud,
<qmarkx>en que parte
de la historia
has quedado? n4

<qmarkx>En que parte de la historia has quedado? In what part of history have you remained? - asks Indio/Mestizo poet activist Raul Salinas. This is a critical question, perhaps the critical question, for LatCrit studies 101. Where in history are we, we who name ourselves or accept the name "Latina"?

In the October 1997 issue of Latina Magazine, contributing editor Chiori Santiago opens an article on...
Latina women with a reference to "Nobel Prize-winning Guatemalan activist Rigoberta Menchu" as a Latina who has "made it." I have heard Rigoberta Menchu speak many times since she first toured the US in the early 1980s, denouncing the war of genocide the Guatemalan State has carried out against the Mayan people. I have never heard her refer to herself as "Latina" - and I question whether Ms. Menchu would appreciate that denomination when much of her life's work has been to make visible the histories and present-day lives of the Mayan peoples. What does it mean in the United States today for Ms. Menchu to be named "Latina"?

I am going to assume that these discussions of critical race theory will be of some use, some benefit, to critical race practice. That it will benefit our communities, tribes and nations as we challenge the structures and devastations that colonialism in all of its manifestations has wrought.

The questions panelists were asked to consider fell into two categories. The first category asked how have the experiences of indigenous peoples in the U.S. been similar or dissimilar? The second category asked if LatCrit has a role to play in examining these histories and if so, what is it? Part of answering these questions requires that we also ask why and how we might use the term "Latino" - a name emerging out of our histories of colonialism - and asking what relationship the term Latino has with the terms "Indigena" or "Native Peoples."

Bringing this back to critical race practice, I must assume that these questions are asked in order to inform your next steps as practitioners, as activists for change. Native American activist Nilak Butler was direct when I mentioned this panel to her: What are you going to do with this discussion? [she asked.] Is it for the good of the whole? We need legal practitioners, technicians who understand Native issues, environmental law, land rights. There are not enough legal practitioners with the knowledge we need and the willingness to work pro bono or to accept long-term payments. We need practitioners who are looking to influence policies that will be more reflective of our own peoples. If you are getting together to discuss law and theory the question I have is: Which path makes the most sense for the earth and its peoples? 

The term "Latino" implies a path that is non-indigenous. Not all the peoples of the areas known as "Latin America" have the same history - nor do we have the same path to our collective future.

II. De-internalizing the mythology/reclaiming our histories

The domination of the mystified past over the present expresses itself in a conception of the future as unalterable. Conversely, the demystification of the past through the reclamation of the history of individual and collective resistance permits the prefigurative envisioning of a transformed future.

To look at the question of our colonial, postcolonial and neocolonial experiences we must open up the entire mythology of the "discovery" of the Americas as it is taught in the United States:

In his search for the Indies Columbus discovered a "New World," whose inhabitants were friendly and welcoming. They thought the Spanish were gods! Fast Forward to Spanish conquistadors on horses - Cortes, Pizarro, Ponce de Leon - claiming lands for Ferdinand and Isabel. A sweet Indian princess/slave befriends/falls in love with great white man, a.k.a., Cortes, helping him conquer her people. Fast Forward to grateful English pilgrims finally landing on Plymouth Rock. Refugees from religious persecution, they have come to face the wilderness of the new world for righteousness and their god. What luck! Again a sweet Indian princess befriends/falls in love with great white man, a.k.a., John Smith. Intervening on behalf of all white men, she implores her father, the savage chief, to spare them. Soon white people and Indians are laughing and smiling together, sharing the first "Thanksgiving" celebration. What nice Indians, they gave the white people corn and turkey! Fast Forward to pioneers and cowboys, moving west in covered wagons. Bad Indian warriors are terrorizing white women and children! Burning houses! Plundering, scalping, whooping war calls as they ride naked across the plains! Thank god for the Calvary, who arrive in time to save the white women and children from the savages! Fast Forward to the Lone Ranger and his friend Tonto, the one good Indian. He white man friend.

In order to understand the colonial, postcolonial or neocolonial experiences of Native peoples on this continent, we - all the peoples of the Americas - must step outside of this mythology in all of its variations. How simple to put those words on paper, to even say them out loud. How very difficult the process of stepping outside of all that we have internalized during the past five hundred and five years of colonialism - of de-internalizing, if you will, the mythology of our origins; of casting off the domination of the mystified
past in the subjective practice of liberating our own stories.

The so-called "colonial" experience began at the juncture of history and myth - when Cristobal Colon landed on the island of Quisqueya. This European soldier/explorer claimed Quisqueya for Spain, "naming" this "discovered" land Espaétilda n>ola - belonging to Spain - and kidnapped/abducted several Tainos in the first of millions of acts of war. In Colon's own words: "As soon as I arrived in the Indies, on the first Island which I found, I took some of the [*355] Natives by force in order that they might learn and might give me information of whatever there is in these parts." n9

So we have the point of contact, and we have the first act of war. Five hundred and five years ago our world was split apart (not brought together, as myth would have it) and since then our mythologies and our histories have evolved in Pllel realities.

This juncture has critical implications for Latinos, for what some call "outsider discourse" and "critical race theory," as well as for legal scholarship - beginning with a name which may or may not be the name we would have chosen for ourselves, depending on which Pllel reality you occupy. Before Colon we were many. We were not Americans. We were not hyphenated. "Hispanic" came with Colon. "Latino" came with Colon. Since Colon, one common experience has been trying to "de-colon," decolonize, take Colon out.

When Colon came he brought double-speak, predating Orwell by several hundred years. Colon the outsider came to our lands and named them "of Spain," making us-who-resisted not-of-Spain, making us the outsiders on our Native soil. One of the defining factors in the colonial, postcolonial and neocolonial experiences of Native peoples in this hemisphere, then, is how much we have remained outside of Colon/the colony and how much we have internalized Colon. And can we tell who is Colon and who we are? when he is inside us?

Historians make political choices when they choose which facts - whose actions, what relationships, which events - to report and which to leave out. They make deeper choices still when they align those "facts" in a conceptual grid, such as liberalism, Marxism, or Christianity. When a historian's grid accords closely with the understanding of the world that best serves the interests of those in power, it becomes invisible and what is left looks like a simple, factual chronology. n10

The conceptual grid that defines our understanding of/our telling of history is itself defined by our internalization of the colonial mythology from the European perspective. What is the conceptual grid of Latinoism, of Latino studies, of Chicano Studies, of Puerto Rican Studies? Has this conceptual grid been subservient to the conceptualized grid of imperialism, of colonialism - post and neo? How has the nascent "latinoism" colluded with the mythology of [*356] Colon-ization to the exclusion of Native peoples? How has it colluded with the exclusion of ourselves?

Is Latino a meaningful category? In what situations? n11 Eric K. Yamamoto refers to "decentering whiteness" as the singular "referent for determining racial group identities and relations." n12 It expands racial formation and racial justice into the realm of interracial relations. Yet for some Latinos, whose Mestizo culture is Native and Spanish (and for some of us, African), de-centering whiteness splits us in two: are you white, Native or other? What does it mean to be "other" and referentially opposed to "Native" when it is often your Native blood that makes you not-white?

III. At the outsider table - can we talk?

Whatever the differences in our various histories - whether actual or mythologized - we are currently experiencing a shared reality in relation to the evolution of postcolonial power relations in the world. Let us imagine that we are sitting collectively at the global outsider table, we children of colonialism. We bring to this table our various histories: we are the survivors of genocidal intent, we are the children of slaves, we are full-bloods and half-breeds, we are Mestizos and Mayas, Kickapoo and Caribs. We speak K'anjobal, Spanglish, Quechua, Mohawk, Creole, English. Our hair is straight and kinky, we are trigue<tilde n>as, blond, color de cafe. We have been pitted against each other over and over again. When we look at each other it is difficult for us to see past the mythologies, the lies, the propaganda. We look at each other and see the projections of a mythologized past/present: we might think we are seeing la Malinche, Colon, Uncle Tom, Geronimo, Tupac Amaru, Freddie Prinze, the virgin, el macho, the slut, fulana de tal. In fact we are the product of all of these and of none of these. We need to pack up those images and put them in the folder icon on our desktop, labeled "old archetypes for future study" so we can begin to really look around the table at our naked faces. Presente todos, let's get on with the agenda.

[*357] And what is that agenda? A central "challenge facing any movement dismantling... a system in which one culture dominates another... is to provide for a new order that does not reproduce the social structure of the
old system.” n13 The first item on our agenda, then, must be an agreement that we aim to work in solidarity with each other as we discover how we have internalized and have perpetuated the old system - the colonialisms; as we work to dismantle and to de-colonize those structures inside us individually and collectively; and to look to our common and different experiences pre- and post-Colon for the basis of the new order.

I believe that we must consider the proposals of our indigenous sisters, mothers, grandmothers, compa<~><tilde>n>eras en lucha as one of the first items for our common agenda. If we claim that we are the children of indigenous women, then we must seriously listen to our mothers. If we are re-claiming the mythology surrounding la Malinche, then we must look at her vision, removed from Colon's interpretation. If we embrace Tenontzin as our spiritual guide then we must follow her and not patriarchal Christianity's interpretation of her.

I must ask those of you developing this discourse called LatCrit theory, if la Raza Cosmica comes of the union of the Indian mother and the European father, where is your mother's voice? In what form has the mythology born of colonialism entered into our theories? Colon set forth the language, the world-view that would define the discourse of colonialism in this hemisphere for the next five hundred plus years. With few exceptions, the recognized history of colonialism has taken place in the oppressors' tongue, whether we are Taino or Chiricahua, Potawatomi or Mapuche, K'anjobal or Dine. Denied our tongues, we are denied our stories, and without our stories we have no decolonized legacy to leave for our children. n14

[*358] The late scholar/activists Ricky Sherover-Marcuse and Harrison Simms, and their colleague Hugh Vasquez, have proposed this working definition of the term "oppression": the systematic, pervasive, routine, institutionalized mistreatment of individuals based on their membership in various groups which are disadvantaged by imbalances of power in society. n15

The project begun by Colon instituted the systematic oppression of the peoples indigenous to this hemisphere. How the various colonial societies evolved in relation to the different indigenous Peoples, and how the oppression of indigenous peoples was imbedded into the political, cultural, economic and social institutions of each colonial state is a topic far too vast for the scope of this discussion. The racial stratification born of the systematic oppression of indigenous and African peoples, of forced as well as chosen unions between races, and the mixing of blood and culture is as diverse and varied by region and state as any other aspect of the hemispheric history since Colon.

Europeans set up a colonial project here to extract wealth from the peoples and land. The "wars of independence" were the colonists cutting off the economic and political control of Europe - while maintaining the colonial structures of the systematic oppression of indigenous peoples. The privileges and power previously held by the Spanish was now claimed by the children of the Spanish, Portuguese, English, and French. Over the course of these 500 years the "Anglo-American" states formed a union, and ultimately achieved political, military and economic dominion over a good part of the hemisphere - specifically over many "Latin-American" states. This dominion has come to be called neocolonialism - the re-colonizing of the region by a new power - the U.S. This new colonial relationship did not change the essential structures of power - it added a new top layer to the stratification of power, whether military, political or economic.

The peoples of Anglo America have colonized the peoples of Latin America, and this neocolonialism defines the relationship of all Latin Americans to the U.S. When Latin Americans migrate to the U.S. they are transformed into Latinos - colonized peoples forced by history to enter the colonizers' nation.

The mythology of the Latin American nation states is that their peoples are "Latin" descendents of Spain, or, that they are Mestizo nations who claim indigenous ancestry but whose voice and vision (education, philosophy, literature, social sciences) are European or Euro-American. History begins at "conquest" and is interpreted and embodied by the colonizer. This mythology effectively makes invisible the Native peoples of Latin America, or at best reduces them to colorful remnants of the past to be packaged for tourism.

IV. De-colonizing "Latino"

It will be good if the Ladino can understand what the ancianos know, that if there is no suffering there is no change. Maybe the next step will be to say, 'I am the product of a mix of our country's races - so I am Maya too.' n16

Can the histories and experiences of the peoples indigenous to this hemisphere enhance LatCrit analyses of social and legal power, privilege and subordination? I believe the answer to your question is a qualified yes. I think that we must ask ourselves
some very hard questions, as people who have been defined - by whose conceptual grid? - as Latinos. For example, what is the basis of our (Mestizos in US) social and legal power today? What are the so-called privileges we enjoy? What is our relationship to the (subordinated) indigenous nations/communities in the U.S./Americas? Our understanding of our history is incomplete without these questions. Until they are answered we are hindered in our process of de-colonizing our individual and collective selves.

You ask, can or should LatCrit theory help to deconstruct and interweave these histories to facilitate empowerment and interconnection among and between these and other subordinated groups? I think that depends on how LatCrit theorists determine their relationships to "these subordinated groups." Can LatCrit theory take this on? I guess my question is, can it afford not to?

How should this be done?, you ask. By continuing the process of our own de-colonization. By beginning a critical examination of our relationship to "conquest', 'subjugation', and to the indigenous peoples of the world through a de-colonized lens. I believe this is done through entering into and supporting a dialogue with Native activists and academics about our common struggle/s. Do you know the works of Paula Gunn Allen, Ned Blackhawk, Beth Brant, Ward Churchill, Elizabeth Cook-Lynn, Vine Deloria, M. Annette Jaimes, Winona Laduke, D'arcy McNickle, Anna Lee Walters, Angela Cavender Wilson? Why not? This work should be done by supporting the leadership of Native thinkers, theorists, activists, by asking them for their perspectives before assuming they want to hear yours. Remember to ask, who is at the table?

This work must be done by critically examining colonial, postcolonial, and neocolonial "legal" relationships between Native and Euro/American nations and governments through a de-colonized or at least de-colonizing lens. It must be done by taking a pro-active stand against those relationships that perpetuate subordination, domination and genocide - no matter the privileges we might have to give up.

This work must be done by making "critical thinking" as it comes out of the LatCrit community accessible to other Mestizo/indigenous people in our communities, through de-colonizing language, and through insistence on translation to all of our languages.

Finally, you ask, why?

Because it is the path to our own emancipation as human beings. If we are lucky, we will get to glimpse our own de-colonized potential. We do this work so that our children, and their children, can be free to have visions of their potential that is beyond our still-colonized imaginings.

FOOTNOTE-1:

n1. Luis Guillermo Lumbreras, La cultura indigena 500 a<tilde>n>os despues, in Quinientos a<tilde>n>os de historia, sentido y proyeccion 101, 102 (Leopoldo Zea ed., 1991).


n3. To refer to the indigenous peoples of the area now known as the Americas - the continents and islands that comprise this hemisphere with one all-encompassing term is itself problematic. For the purpose of this paper, when it is not possible to speak of a particular nation (Dine or Oneida, for example) I will use the terms "Native," "Native American," "American Indian," and "Indian" interchangeably to refer to the indigenous peoples of the area now known as the Americas. Less frequently, I will use "American Indian" and "Indian" to refer to the Native peoples of Canada and the US, and "Indigena" to refer to Native peoples of the Central and South America. When referring to the works or words of others I will use the language of the author.


n6. See Robert A. Williams, Jr., Vampires Anonymous and CriticalRace Practice, 95 Mich. L. Rev. 741 (1997). Mr. Williams, a member of the Lumbee tribe in North Carolina, tells how he was called upon by the Native communities surrounding the law school where he taught and wrote about critical race theory to be accountable to them:

"What these Arizona Indians really wanted me to do was to get off my critical race theory ass and do some serious Critical Race Practice. They didn't give a damn about the relationship between hegemony and false consciousness. They wanted help
for their problems, and I was a resource. That's why they were so tough on me." Id. at 759.

This challenge to develop a critical race practice resulted in the formation of a Tribal Law Clinic, where all of the clinic's projects:

are approached as efforts aimed at decolonizing United States law and international law relating to indigenous peoples' rights. Students are encouraged to try to understand how the legacy of European colonialism and racism are perpetrated in contemporary legal doctrine, to expose that legacy at work in the project they are working on, and to develop strategies which delegitimate it, literally clearing the ground for the testing and development of new legal theories.

Id. at 763.


n11. Eric K. Yamamoto asks these questions as well:

under what circumstances do individuals faced with justice issues shift between pan-racial and ethnic identities? How do differences concerning history, culture, economics, gender, class, mixed ancestry, immigration status and locale contribute to malleable victim and perpetrator racial identities? How do unstable racial identities detract from or provide opportunities for deeper understandings of interracial harms and group responsibility for healing?


n12. Id. at 36.


n14. Elizabeth Cook-Lynn has written eloquently of the decolonization of storytelling:

The role of Indians, themselves, in the storytelling of Indian America is as much a matter of 'jurisdiction' as is anything else in Indian Country: economics, the law, control of resources, property rights. It goes without saying that it reflects our struggle with the colonial experience of our concomitant histories. If that sounds benign, it is anything but that. On the contrary, how the Indian narrative is told, how it is nourished, who tells it, who nourishes it, and the consequences of its telling are among the most fascinating - and, at the same time, chilling - stories of our time.


Ms. Cook-Lynn continues:

The diversity of American scholarship is being developed in substantially different ways from that of the historical educational pattern of colonial coercion for captive Indians. There are new movements afoot. This means that the Indian story is included in every genre and most disciplines during this era of the rise of cultural studies, diversity, and multiculturalism. In this period, the so-called "mixed-blood" story, often called "the post-colonial" story, has taken center stage. The bicultural nature of Indian lives has always been a puzzle to the monoculturalists of America; thus, mixed-
bloodedness becomes the paradigm of preference.

**Id. at 59.**

n15. This definition is utilized today in classes, workshops, and trainings presented by the activists and facilitators of the TODOS Sherover Simms Alliance Building Institute and the Oakland Men's Project, both of Oakland, California.


n17. This is certainly not an exhaustive list of American Indian scholars and writers, but are some of the authors who have informed my thinking about this paper. Paula Gunn Allen (Laguna/Sioux) is a poet and writer, author of The Sacred Hoop: Recovering The Feminine In American Indian Traditions (1992). Ned Blackhawk has written, among other articles, I Can Carry On From Here: The Relocation of American Indians to Los Angeles, 11 Wicazo Sa Rev. 16 (Fall 1995); Beth Bryant (Mohawk) is a writer, whose works include: A Gathering of Spirit: A Collection By North American Indian Women (Beth Bryant ed., 1988); Writing as Witness: Essay and Talk (1994). Ward Churchill (Creek/Cherokee Metis) is a scholar, activist, and prolific writer, his books include: From A Native Son: Selected Essays In Indigenism, 1985-1995 (1994); indians Are Us?: Culture and Genocide In Native North America (1994); and Since Predator Came: Notes From the Struggle For American Indian Liberation (1995). Elizabeth Cook-Lynn (Crow/Creek/Sioux) is the founder and editor of the native studies journal Wicazo Sa Review, and the author of various articles including the collection of essays Why Can't I Read Wallace Stegner: A Tribal Voice (1996). Vine Deloria, Jr. (Standing Rock Sioux), Professor of American Indian Studies, Law, and Political Science at the University of Colorado at Boulder, is a prolific writer. His books include: American Indians, American Justice (1983); American Indian Policy in the Twentieth Century (1985); Behind the Trail of Broken Treaties (1974); Custer Died For Your Sins (1969); Red Earth, White Lies: Native Americans and the Myth of Scientific Fact (1995); and We Talk, You Listen (1970). M. Annette Jaimes (Juaneño/Yaqui) has worked and written in a variety of fora, and is the editor of The State of Native America: Genocide, Colonization, and Resistance (1992); Winona LaDuke (Chippewa) is an American Indian rights and environmental activist, whose recent writings include: Last Standing Woman (1997); and Ogitchida Ikwewag: The Women's Warrior Society in Reinventing the Enemy's Language: Contemporary Native Women's Writing of North America (Joy Harjo & Gloria Bird et al. eds., 1993). The late D'Arcy McNickle (Confederated Salish and Kutenai Tribes of Montana) was an historian, activist, and writer. His works include: Native American Tribalism: Indian Survivals and Renewals (1973); and Runner in the Sun: A Story of Indian Maize (1954). Anna Lee Walters (pawnee) lives and works on the Navajo Nation, her works include: Ghost Singer: A Novel (1988); and with Peggy V. Beck & Nia Francisco, The Sacred: Ways of knowledge, sources of life (1995). Angela Cavender Wilson (Dakota) has written various critical articles including American Indian history Or Non-Indian perceptions of American Indian History? 20 Am. Indian Q. 3 (1996).
To really matter, Latinos must be recognized. And to some degree, we must be understood too, yes, in all our complexity, and yet so as to be seen as a force sufficiently coherent to exercise clout. That wouldn't seem to be asking too much, either of ourselves or of others. After all, basic recognition, some understanding, and occasional influence would seem elemental to membership in the national community. And today, if only by virtue of our growing numbers, enhanced interest in Latinos perhaps foreshadows a new era. Knowledge about Latinos may in the near future be as profound as it is sweeping.

Yet experience has taught us just how elusive these ambitions can be. Latinos remain most often on the outskirts of public perception. Along with Asian Americans and American Indians, we still typically occupy the shadowy category "blacks and other minorities." Even when Latinos already number more than 26 million (10% of the nation's population), n2 even when Latinos outnumber Blacks in Arizona, California, Colorado, Hawaii, Idaho, Maine, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, and Wyoming, n3 even when by 2005 Latinos will become the largest minority group in the United States, n4 even when by 2050, Latinos will outnumber Asian Americans, American Indians, n*364 and Blacks combined, n5 we still seem too often dwarfed, depreciated, eclipsed. n6

It's a familiar point, one I've been making for years, pleasing some, discomfiting others, embarrassing others still. n7 But there are those days I feel it can't be emphasized enough. And I'd feel the same way no matter which groups of color found themselves systematically at the margins. In the motion picture Bulworth, the fictional Senator simply can't picture Latinos (or, for that matter, Asians, or Armenians, or Persians) as part of hip-hop culture, gritty inner-cities, or the political challenges our country must face. Even when Latinos now number perhaps 30% of California's population, 44% of the City of Los Angeles' population, and over 50% of South Central's inhabitants, Warren Beatty still sees right past us. n8 Maybe I'm missing the real lesson: I should be praising and not bristling at the phrase "blacks and other minorities." Perhaps it implies coalitional possibilities, particularly in the face of radical demographic shifts, in Los Angeles and all across the country. n9

In any event, we Latinos make it into some people's view only when we're included in this vague catchall minority squad. Otherwise we might entirely disappear from their sight - in Beltway debates, in national and
local media coverage, in movies and on television and in print.

In recent years, it is true, attention has focused more than before on who we are, what we think, and how we might fit into the national scene. Breakthroughs can be notable. The April 25th 1998 issue of The Economist spotlighted Latinos On The Rise. n10 On June 4, 1998, two days after the most recent statewide election in California, the Los Angeles Times prominently featured, as it now does after all major elections, sophisticated polling data identifying voter preferences by such categories as sex, annual family income, party registration, political ideology, religion, age, education, and race/ethnicity (White, Black, Latino, Asian). n11 And on June 14, 1998, with even more dazzling production values and a larger audience, the American Broadcasting Corporation showcased the annual ALMA awards, where prominent Latino entertainers saluted one another for their work.

But such occasional progress often only emphasizes how much business as usual slights Latinos. In the coverage more typically provided by major magazines, newspapers, and television networks, Latinos are treated, at best, as afterthoughts and throw-ins and analogues, at worst, as wannabes and who-knows-what-they-ares and impostors. Of course, we haven't been treated any better by the major political parties. In a strange twist, the media seems now [*366] most inclined (at least for the moment) to headline this story, emphasizing the contrast between today's pandering to and yesterday's disregard of Latinos. Daily reports, op-eds, and television specials highlight, for instance, how California Republicans try mightily to distance themselves from Pete Wilson's scapegoating support of Propositions 187 and 209, while California Democrats energetically aim to consolidate their relationship with the state's fastest growing group of voters. n12

Bookstores across the country offer still more evidence about Latino standing in the nation's consciousness - at least if what I've learned on my travels at all Pllels what more careful empirical work might reveal. Large chains, it seems, now regularly stock Christina Garcia's Dreaming in Cuban, Sandra Cisneros' The House on Mango Street, Richard Rodriguez' Days of Obligation, perhaps Earl Shorris' Latinos. n13 Smaller independents may offer Gloria Anzaldua's Borderlands/La Frontera: The New Mestiza, Alejandro Portes and Alex Stepick's, City on the Edge: The Transformation of Miami, perhaps Clara Rodriguez' Puerto Ricans: Born in the U.S.A., even William V. Flores & Rina Benmayor's Latino Cultural Citizenship. n14

But what's readily available in bookstores across the country remains far too thin. Browsing won't likely lead to the discovery of, say, Carla Trujillo's Chicana Lesbians, Alfredo Mirande's Gringo Justice, John Storm Roberts' The Latin Tinge, George Sanchez' Becoming Mexican American, or Jose Antonio Burciaga's Spilling The Beans. n15 And, if informal accounts from authors are at all reliable, what bookstores do offer by and about Latinos sits too long on the shelves, perhaps partly explaining why bookstores don't [*367] change their purchasing and inventory practices. Readership hungry for Latino-centered books still seems limited to a relatively small coterie of teachers, students, and iconoclastic book lovers.

To be sure, Latino visibility has indeed improved, particularly over the past quarter century. But we're far from being understood, not just by others but even by ourselves. It's one thing to realize how little long-time residents of Maine know about those Latinos who pick their beloved blueberries. It's quite another to realize just how little second- and third-generation Puerto Ricans and Dominicans know about those Mexicans who now make New York and New Jersey their home. It's one thing to realize how little health-conscious residents of Seattle know about the working conditions of those Latinos who make their clothes. It's quite another to realize just how little second- and third-generation Chicanos in East L.A. know about their Honduran, Guatemalan, and Salvadoran neighbors in metropolitan Los Angeles.

The antidote would seem to be more information. We need more novels, more short stories, more plays. We need more telenovelas, more concerts, more feature-length movies. We need more biographies, more memoirs, in print and on the small and large screen. We need more ethnographies, more histories, more surveys, more impossible-to-categorize-but-illuminating accounts of Latino life. As importantly, we would seem to need better marketing of everything produced by and about Latinos. We need to trumpet, cross-reference, and advertise every imaginable source of knowledge. We need to target every outlet: weeklies and daily rags, networks and offbeat cable channels, web and journal sites, conservative, progressive, and centrist venues. We need to become ready, willing, and able witnesses, speaking to all who will listen, indeed cultivating the interest of considerable numbers who can't now imagine why they should pay much attention to, much less systematically learn about Latinos.

Most Latinos I know fully endorse this corrective. I'm talking carpenters, social workers, dental hygienists, farm laborors, kindergarten teachers, gardeners, journalists, painters, actors, domestics, elected
officials, plumbers, television executives, musicians, electricians, doctors, interpreters, anthropologists, political consultants, roofers, architects. I'm talking people of all ages, colors, sexual orientations, people with multiple graduate credentials, people with high school equivalency diplomas, people who dropped out during middle school. In different yet overlapping ways, they all understand the importance of producing and circulating knowledge by and about Latinos. In different yet overlapping ways, they all appreciate the relationship between recognition, understanding, and influence. [*368] In different yet overlapping ways, they all want Latinos to really matter.

Those principally responsible for having brought LatCrit into existence would seem to share this view. n16 Certainly they aim to produce knowledge. And in producing this knowledge, they hope to help provoke changes that would improve the lives of Latinos and bring social justice to all. They see their project as inherently collaborative. Coalitions of eclectic groups and individuals must work together, as scholars and everyday citizens. Like the many others who would like to see Latinos really matter, LatCrit founders mean to spread the word, generating and disseminating facts, figures, and ideas about Latinos through means and methods as diverse as their experiences and imaginations, ultimately moving Latinos near the center of attention, in law, lawyering, and social life.

More and better marketed information may well be a central way for Latinos to gain recognition and understanding and influence. But this remedy for improving our national stature entails its own perils. More is not always better. Information generated by and about Latinos is only as trustworthy as the instruments are sound. Assumptions must be scrutinized, methods tested, beliefs questioned. Again and again and again. Even when newly excavated knowledge seems potentially enlightening, spreading the word about what we've learned can be perversely difficult. Effective marketing opportunities most often depend on just the sort of influence we still have yet to achieve. Even when available, they're notoriously treacherous to navigate. Marketing distorts as much as it reliably portrays. Sometimes evil people mangle the truth. Way more frequently, marketing falsifies, twists, and misleads even when it accurately reports information (at least in some technical sense). In getting the public to substitute new stereotypes for old ones, marketing operates like a poisoned gift.

At least when depicted in such broad terms, the hazards inherent in developing and pushing knowledge about Latinos can seem almost innocuous. But the potential damage is real: These pitfalls [*369] can delay, cripple, and even halt the march toward making Latinos matter. "That's just the nature of the beast," some might insist. And I happen to agree. Yet this sort of street sensibility can sometimes lead to a comforting self-delusion: Such hazards, we often seem to say to ourselves, are not the sort of things any of us would permit easily to happen, much less invite or court. I'm not so sure, though. In the name of recognition, understanding, and influence, in the name of making Latinos really matter, how many of us have ever exaggerated what we do know? How many of us have ever concealed what we do not know? How many of us have ever ignored a truth we found uncomfortable? How many of us have ever denied some facts we found difficult or impossible to reconcile with what we would like to believe or at least project to the world? How many of us have ever hyped one image, one analysis, one meaning rather than others in order to grab attention? How many of us have ever nudged aside some account of events, some portrait of a community, some nagging philosophical Pdox simply because we didn't want others to notice?

Instead of denying the hazards we perhaps inevitably confront in producing and pushing knowledge about Latinos, we should regularly expose them. Instead of running from our own failings in the course of our professional work and everyday lives, we should face them down. Examples are not that hard to uncover. Recall only this or that kitchen conversation, public policy report, campus debate, television commercial, movie trailer, op-ed piece, scholarly paper. Indeed, each of us probably has a list of notorious favorites. Perhaps we even share them with close friends or allies. Driven by ideological friction or personal animosity or even a I can't-quite-figure-why-this-bothers-me-so-much reaction, we find some embellishment, some dissembling, some denial especially troubling. Others we seem to excuse more readily, perhaps because we discount the costs imposed in light of the benefits conferred, perhaps because we delight in the artistry involved, perhaps because we see the particular failing as all too familiar.

In any case, all these examples - especially irritating ones and seemingly benign ones - merit our attention. Don't misunderstand. We'll never entirely avoid the pitfalls inherent in producing and disseminating knowledge about Latinos. We'll never even know exactly how frequently or how much they undermine our collective ambitions. But our foibles, vices, and blunders can serve as chastening reminders of both the challenges we face in learning about Latinos and the frailties we bring to the task. After all, we can easily find ourselves in the ugliest sorts of binds. Especially when we so ardently want to put into play Latino experiences and views, we can sometimes exaggerate, conceal, ignore, deny, hype, and nudge [*370] aside.
Our beliefs, our assumptions, our methods may occasionally debase our otherwise worthy aspirations. Talking openly about failings - instead of stockpiling them for snide gossip and holier-than-thou paybacks - may help us to better know ourselves and the world we share with others. In any event, this spirit animates this essay.

I. THE LATINO NATIONAL POLITICAL SURVEY
ITS ARRIVAL

The year was 1992. It seems to have been a year where people and institutions in the United States looked at one another with renewed curiosity. It began, with great fanfare, as the year of the Columbus quincentennial. There were fears, certainly among people of color, about a one-sided celebration of Europe's civilizing mission. But, no small thanks to the concerted efforts of indigenous peoples, teachers, and scholars, the quincentennial became an occasion for considerable reflection on the history of colonialism and the profound ambivalence of its legacy in the Americas.

Any perceived need for national self-appraisal in 1992 only intensified when, as television cameras dramatically documented, Los Angeles erupted in the wake of the acquittals of Theodore Briseno, Stacey Koon, Laurence Powell, and Timothy Wind, the four police officers accused of illegally beating Rodney King. People across the country gained a new appreciation for how little they knew about one another. Political efforts to narrow the definitions of who and what was "truly American" seemed, at least for the moment, increasingly out of touch with contemporary demographics and traditional democratic aspirations. Come November, to the surprise of many, Bill Clinton was in, promising an administration that "looked like America" in all its diversity, and George Bush was out, in part done in by Republican xenophobia. Not just government but institutions all over the country - including the media itself - were forced to give definition to an already emerged "multiculturalism," even if they simultaneously slighted or mocked it.

Enter Rodolfo O. de la Garza, Louis DeSipio, F. Chris Garcia, John Garcia, and Angelo Falcon, scholars dedicated to developing and sharing knowledge about Latinos. At a December 14, 1992 press conference held in Washington, D.C., they made public the findings of their just completed Latino National Political Survey (LNPS). Funded by the Ford, Rockefeller, Spencer, and Tinker Foundations and published by Westview Press under the title Latino Voices: Mexican, Puerto Rican, and Cuban Perspectives on American Politics, the LNPS ambitiously surveyed 2817 Latinos - face to face interviews, often more than 90 minutes long, with 1,546 Mexicans, 589 Puerto Ricans, and 682 Cubans in 40 metropolitan areas. The authors offered their study as a partial antidote to the ignorance, neglect, and groundless speculation that often typify this country's knowledge of and interest in Latinos. They hoped to initiate a new era where Latinos themselves might describe how they see one another and the world around them.

The very availability of the LNPS marked yet another milestone in the campaign to get the nation to recognize and understand Latinos. In 1980, largely in response to public demands for and professional suggestions about how optimally to gather better information about Latinos, the Census Bureau for the first time included categories that enabled people to identify themselves by national origin as well as by race.

The data collected provided a basis for carefully documenting what many marketing departments, community activists, politicians, and scholars already had perceived: Latino populations across the United States varied in their national origins and in their particular configurations. There were people of many origins (Mexican, Puerto Rican, Cuban, Dominican, Salvadoran, Guatemalan, Nicaraguan, Ecuadorian, Honduran, Colombian, Haitian, Venezuelan) and many who simply identified themselves as what the Census Bureau termed "Other Spanish/Hispanic." And the 1980 census data offered a mapping of the numbers and distribution of these populations, helping to redress the "undercounting problem" that so habitually undermines the fair distribution of government monies.

For all the promise these changes implied, the nation's knowledge of Latinos remained rudimentary at best. Independent national surveys and public opinion polls almost never systematically included Latinos as a separate population whose social and political attitudes and behaviors could be analyzed. Whenever Latinos happened to be included in some survey or poll, they were never broken down by national origin - as if roots in quite diverse countries and experiences mattered little to views about the world. In the absence of reliable survey data, claims of virtually every ideological sort were made with great aplomb about what exactly Latinos think and believe. And, particularly as Latinos gained in numbers, visibility and potential political clout, these claims seemed to be flying around with even greater frequency and stridency than before.
Together, the scholars who designed and implemented the LNPS and the foundations that funded their efforts aimed to improve this state of affairs. They wanted the information they collected to describe Latino political priorities, attitudes and behavior. They wanted Latinos to share their views about so-called core American values, to reveal their attitudes about other groups and major social issues like abortion, affirmative action, and women's rights, to voice their views about foreign policy questions, to describe their voting practices and political activities. \( n26 \) And, at the same time, the survey's designers and sponsors wanted the information they collected to serve as a detailed demographic profile. They wanted Latinos to trace family histories three generations, to measure their own language facility, to choose their own identity labels. \( n27 \)

Building on Census Bureau data, the LNPS's designers and sponsors wanted to gather reliable information - about specific topics, from particular groups, through refined techniques. They chose to focus on Mexicans, Puerto Ricans and Cubans, partly because of the size and political clout of each of these groups, and partly because it would have been technically and financially infeasible to survey representative samples of every Latino group. \( n28 \) And, principally interested in exploring relationships to the polity, they surveyed only those who were eighteen years of age or older, carefully distinguishing between citizen and non-citizen Latinos, and between the 2817 Latinos and the 456 non-Latino whites (Anglos) surveyed. \( n29 \)

Aware of their own significant ambitions, the authors and their funders took special care in designing and implementing their survey. They explored the relative advantages of different sample designs, of in-person versus telephone interviews, of permitting the respondents to choose between Spanish or English, of pursuing new or familiar issues. \( n30 \) They consulted and employed some of the most distinguished social scientists in the country. \( n31 \) They borrowed some \( [*373] \) questions from established surveys and from the work of other experts, and they generated new questions from their own past work, from the feasibility study that informed the final survey, and from a series of focus groups interviews. \( n32 \)

Even with the fastidiousness that distinguished its prePtion, the LNPS might never have attracted much attention. Left to the brutalities of the book world, many a worthy study seemingly vanishes without a trace, almost upon publication. But the LNPS authors and funders were no less ambitious about packaging the information for public consumption than they had been about the design of the survey itself. With the help of a public relations firm, they packaged their conclusions and comments in a manner shrewdly calculated to capture national publicity. They chose to present their data in the format most frequently used by public officials and the media. \( n33 \) They actively sought immediate and wide dissemination of survey findings through press releases and, perhaps most rouslying, a press conference held in the nation's capital. \( n34 \) Focusing attention on the nation's 25 million Latino inhabitants, they unashamedly marketed their ambitious survey, permitting those Latinos they interviewed "to speak for themselves" to the rest of the country. \( n35 \)

The "press kit" hit the jackpot. The next several mornings newspaper readers across the United States, from Los Angeles to New York and places in between, could hardly miss prominent, often front-page, animated stories about Latinos. "Poll Finds Hispanics Desire to Assimilate," said the New York Times; \( n36 \) "Hispanics Feeling at Home," declared USA Today; \( n37 \) "Latino Survey Finds Some Surprises" remarked the San Diego Union Tribune. \( n38 \) The LNPS met with the nearly the same excitement among scholarly book reviewers. "The importance of Latino Voices and LNPS," said one knowledgeable reviewer, "cannot be overstated." \( n39 \) While national surveys of other groups are common, the LNPS was "only the third national survey of the Mexican American population...\( [*374] \) the first that is explicitly political in its design, focus, and objectives... [and] the only nationally representative survey which includes two other major "Spanish origin" groups in the United States, Cubans and Puerto Ricans." \( n40 \) "The Latino National Political Survey," with praise fairly capturing then prevailing sentiment, "is a landmark study which will set the research agenda in Latino political studies for years to come." \( n41 \)

Getting so many to zero in on Latinos was an achievement for which everyone associated with the LNPS could be proud. The LNPS had been conceived as a mechanism for creating a profile of Latinos. Such a profile could be smoothly absorbed into the country's consciousness, which then might more likely count Latinos in national consensus making. The idea was both to create awareness where there was none and to counteract the stereotyping that shaped such awareness as did exist - stereotyping built around fears of Spanish as an instrument of national disintegration, fears of identity politics as a vehicle for "Balkanization" and "tribalization," fears of "minority" takeovers in cities like Miami and states like California. \( n42 \) Even if these aspirations might ultimately prove elusive, spotlighting Latinos (for any period of time) was itself a notable break with the past - a conspicuous triumph.
This was not an instance of more sizzle than steak, however. If shrewd promotion best explains the early attention, the LNPS did indeed offer interested consumers a rich body of information documenting how a wide range of Latinos think and act. The survey describes Latino social characteristics, attachments to the United States, psychological orientations, linguistic and media use patterns, attitudes toward public policy issues, and problem-solving strategies. This information might spark debates - in short time, might ignite interest in learning still more about this country's Latino population. (The authors themselves announced their plans for a series of publications exploring particular dimensions of Latino life captured by the survey's data.)

For all the justifiable jubilation, reports of the LNPS - of its existence and its findings - were nearly as disturbing as they were thrilling. Take immigration policy. Survey data showed significant Latino majorities agreed with the statement "there are too many immigrants coming to this country." And, to make certain no one missed the point, the survey's authors and the media stressed this finding, often trumpeting it as a dramatic revelation. As a result, the LNPS almost instantly became a handy citation for anyone wishing to document Latino support for an assortment of anti-immigration policies - and, if memory serves, there were then proposals floating around to increase the powers and numbers of border agents, to charge fees at the border, to deny undocumented residents access to public medical care and schools, and even to amend the constitution to deny citizenship to U.S.-born children of undocumented residents.

The trouble with this "Latinos favor anti-immigration proposals" story was that there was little evidence to support it - in the LNPS or anywhere else. It is one thing to support the statement "there is too much immigration," quite another to back a proposal to constitutionally obliterate citizenship by birth. Indeed, answers to other questions in the LNPS might even be interpreted to suggest the "Latinos favor these anti-immigration proposals" accounts perhaps had it backwards. Only 7 of 1584 Latinos responding named immigration as the most important national problem; n48 only 15 of 1587 (14 from among the 292 Cubans surveyed (4.4%)) listed immigration as the most important local problem. As both a national and a local problem, immigration ranked far behind "social problems" and "economics." Those Latinos surveyed were divided over whether citizens should be hired over immigrants applying for the same job, with 54.7% of Mexicans and 55% of Puerto Ricans supporting and 58% of Cubans opposing this position. But read as a whole, the data hardly tell the story of throngs of Latinos ready to back anti-immigrant policies. More than a little speculation, more than a little sloppiness, more than a little bias seemed to be at work in passing along what the LNPS said and what those Latinos surveyed thought.

If this hardly seems the way to let Latinos "speak for themselves," perhaps such distortions reveal how little we appreciate the nature of the surveys. Survey research, no matter how meticulously undertaken, can only do some things and not others. This should come as no great surprise. Every research tool is well suited to some but not all aspirations. That's true of the ethnography of the cultural anthropologist, the narrative of the critical theorist, the computer modeling of the cognitive scientist, the interview of the journalist. But surveys seem to invite uncommonly loose use. They have become increasingly central to what we know and how we think, particularly where they fill a large void, as the LNPS did. And most of us probably never much bother to assess the limits of survey research. In any event, we all perhaps lose sight of limits when pressured to come up with something nifty or edgy to say. When approval ratings, story deadlines, elections, grants, and profits turn so often on having something decisive to offer, we may find ourselves making more of any scrap of evidence than might otherwise be justified.

Yet making responsible use of research - of every sort - means disciplining ourselves to recognize the boundaries between what we've learned and what we still don't know. A survey is a snapshot. It freeze-frames the present. This does not mean that a survey cannot direct attention to or even perhaps inform us about past and future events. But a survey principally speaks to the future only through speculation. And it principally speaks of the past only through inference. Indeed, answers to questions about the past are influenced in ways too few of us seem regularly to acknowledge. What we know after the fact about the past necessarily changes the way we now look at what we used to think. These limitations are hardly lethal or contaminating. But they clarify what a survey can tell us. And they imply how we might go about making sense of what information such research provides.

Take the LNPS. The survey assembles evidence about what a large number of Latinos think in response to a wide range of questions put to them between August
limits and biases makes using survey research like that of Cubans. Admittedly, taking account of such factors between the responses of Mexicans, Puerto Ricans and Latinos about any entangling factors - from traumatic national events to pressing family crises - that may well have skewed certain responses. Nor does it provide any of the relevant histories - of Mexicans, of Puerto Ricans, of Cubans - that permit us to make basic sense of the information gathered. How can it not matter to any first-rate description of LNPS findings that Puerto Rico was claimed by the United States at the end of the war with Spain in 1898 and that Puerto Ricans are automatically American citizens at birth? 

Yet the LNPS is entirely silent on these issues, leaving its consumers to fend for themselves, often without much knowledge of relevant histories or contexts.

At times, scholars try to sidestep the relevance or at least diminish the importance of such limitations. Rather like judges in our legal system, they present themselves as neutral figures simply reporting the "facts" as they find them; they see themselves as providing through their surveys raw reliable data. But facts are never an unbiased report of the world, in survey research or in judicial rulings; facts inescapably grow out of interpretations and judgments. The reasons are as much practical and cognitive as they are ideological and cultural. Because survey research is limited by both time and money, scholars can never ask every question. As a result, great effort goes into deciding which goals to pursue and which questions to include. And inevitably the criteria employed to make these judgments reflect some person's, some group's, some institution's predispositions about how best to capture what those surveyed think.

These reminders about the inherent limits and biases of survey research are hardly novel. As much as anything, they seem grounded in prudence and common sense. To my way of thinking, anyone consulting the LNPS to learn what Latinos regard as the cause of Mexico's economic crisis, for example, would be well advised to note that respondents were asked to choose between two options ("U.S. policies are a major cause or government corruption and inefficiency in Mexico are an ever greater cause of Mexico's problems"). And they'd be equally well advised to investigate whether divergent histories might well account for any contrast between the responses of Mexicans, Puerto Ricans and Cubans. Admittedly, taking account of such limits and biases makes using survey research like LNPS a more painstaking task. Aware of constraints and prejudices, we cannot so readily generate sweeping conclusions, so glibly craft snazzy headlines, so brashly declare new truths. But, if the real point of studies like LNPS is to advance our knowledge of and our curiosity about Latinos, is this really so much to ask?

If certain distortions of the LNPS stem from our inability or unwillingness to deal honestly with the limitations of survey research, others seem perhaps to originate in the dynamics of aggressive marketing. Media reception of the LNPS focused on four issues where results, it was said, contradicted prevailing stereotypes: (1) those interviewed overwhelmingly supported the need to know English; (2) significant minorities (around 70%) said there was too much immigration; (3) large majorities expressed love for and pride in the United States; and (4) sizeable numbers expressed differences between, and little identification with, members of the other group. The media seemed to be saying, "finally, here are brand new hard facts debunking images imposed upon Latinos - not just by xenophobes, mind you, but by Latino leaders as well." Battling stereotypes has its virtues. For too long, images of Latinos have been dominated by complicated and even contradictory myths propagated by many non-Latinos and more than a few Latinos. In these myths, Latinos seem to be portrayed, at once, as pitiable and contemptible and as frightening and suspicious, as brave and upright and as unpatriotic and irresponsible and unambitious, as politically liberal and almost "pre-politically" conservative, as uncomplaining and resourceful and as resentful and self-victimizing, as attached to the United States and as refusing to control immigration, to learn English, or to become "American." Obviously, Latinos should not have to accept as authority others' view of who they are and what they're like. And anyone willing to call these depictions into question should be commended. But in setting out to redress caricatures of Latinos, at least some members of the media contributed to, perhaps even deepened, the very problem they ostensibly set out to remedy.

Media reports tended to cast LNPS findings in strongly categorical terms. To Phrase one observer, most mainstream press accounts would have readers believe the survey had uncovered a set of new truths: Latinos are anti-immigrant. Latinos reject bilingual education. Latinos are anti-affirmative action. Latinos have nothing in common. Ever anxious to say something definitive, at times appearing delighted with the opportunity to pull the rug out from under...
politicians of every ilk, most members of the media described Latinos in the language of absolutes. They looked to particular findings in the LNPS, ignored others, and converted whatever they found provocative into headline-friendly conclusions. n61 "Throw out everything you might have believed," accounts seemed to say to readers and listeners, "Latinos are nothing like what you think. In fact, they're the opposite."

So what if a careful reading of the LNPS discredited the media's inventive reality? Yes, many Latinos agreed "there is too much immigration," but survey results do not support the label "anti-immigrant," particularly with all it connotes in increasingly nativistic times. n62 Yes, Latinos overwhelmingly indicated their desire to learn English, but survey data also reveal most Latinos speak Spanish, want their children to speak Spanish, and support bilingual education. n63 Yes, many Latinos rejected strict quotas but even more see the need to mix merit and quota aims in employment and college admission decisions. n64 Yes, Latinos do not express in their responses a sense of common culture, do not consistently form consensus on certain policy issues, and do not prefer a common self-identifying label to their own respective national origin labels. But Latinos do share a great deal (common languages, concerns about economic, social and political issues), manifest uncommon agreement on many domestic policy issues (increased government spending on health, crime, drug control, education, the environment, [\*380] child services, and bilingual education), and prefer a pan-ethnic label (Latino or Hispanic) as their second preferred way to describe themselves. n65

But why should members of the media have been warned about subtleties and qualifications, much less inconsistencies and incongruities? They were out to grab headlines, to show how much the LNPS confounded "conventional opinions," to blow the minds of those whose views were dominated by ugly myths. Insofar as the media aimed to demonstrate that what looks to outsiders like a homogeneous bloc looks to insiders like nothing of the kind, the point is worth making. But in reporting on the release of the LNPS, members of the media substituted new stereotypes for old ones. And they did so knowing full well that most of their consumers probably would never buy or read Latino Voices.

What the media reported may well be all that most people are ever likely to learn about the LNPS. But it is hardly all the LNPS has to tell us, much less all Latinos have to report about themselves. What the media neglected in its coverage is at least as instructive as survey findings it reported. Many important chunks of information (on the appropriate role of government, on public participation, on media use) never made their way into public conversation. n66 Others (views on ethnic consciousness and discrimination) the media typically rendered in sketchy, simplistic, and ultimately misleading fashion. n67 The upshot was to leave consumers with a slanted sense of how Latinos compare to Anglos and with little idea of how to construct an account of American political views that encompasses Latinos.

In the popular imagination, for instance, Latinos often seem identified with traditional Catholic dogma, polarized gender roles, and conservative family values. That may well be true. But the LNPS revealed some arguably stereotype-defying views that, one would have imagined, should have been of considerable interest, though admittedly aesthetically cumbersome to report. When asked to note on a 1-5 point scale their views of women's roles (1 signifying "women [are] better off if they stay home and rear children" and 5 signifying "women [are] better off if they have careers and jobs"), 40% or more from each Latino group chose 4 or 5, roughly 30% chose 3, and weak minorities chose 1 and 2. n68 Among women [\*381] respondents, marginally more Anglo women chose 1 or 2 than did women from any of the Latino groups. And fewer Anglo women and men (22.8% and 29% respectively) chose 5 than did women and men from any of the Latino groups (Mexican 37.7% and 41.2%; Puerto Rican: 41.2% and 34.8%; Cuban 37.9% and 33.3%). n69 It is true that about one-third of all Latinos surveyed thought abortion should be available only in case of rape or incest. But here details matter too. Cubans were by far the least likely to ban abortions under all circumstances. And more than 28% of Puerto Ricans, more than 35% of Mexicans and more than 36% Cubans said "[a] woman should always be able to obtain abortion as a matter of personal choice." n70

A small number of questions concerning foreign policy produced still other interesting results overlooked in media accounts of the LNPS. On whether the United States should normalize relations with Cuba, for instance, all three Latino groups split, with majorities (56-66%) opposed. n71 Among Anglo respondents, however, a slim majority (50.9%) supported normalization, despite a firm policy and a zealous campaign to the contrary. n72 To be sure, we may confront a "sampling problem" in relying too heavily on such a finding: Those Anglos who participated in the survey live in the same geographical areas as those Latinos who were interviewed. n73 But the media never invited their public to consider such details, particularly about LNPS information they never bothered to report.
For that matter, what consumers did see frequently camouflaged related intricacies. That relatively few respondents participated in ethnic movements and organizations was frequently interpreted, for example, as establishing a low level of ethnic consciousness. Indeed, reports emphasized the inappropriateness of a politics based on what the authors call "narrow ethnic appeals." n74 What the media failed to note, however, scrambled the picture. With great frequency, those surveyed in all three groups described their social and institutional lives as largely shared with others from the same national origin group, presumably a strong signal of healthy ethnic ties. n75 Much too was made by the media of the strong majorities who responded that they had not personally been discriminated against because of their national origin. n76 Yet the same accounts too rarely acknowledged that equally large numbers believed discrimination against Latino groups (as well as others) does exist. n77 Such complex findings do not lend themselves to breezy reconciliations; they invite closer scrutiny, extended debate, and the attention of future studies. But shouldn't the media have wanted to recount heterodoxies of all sorts - especially when the very ambiguity of the information underlines the need for even greater care and precision in reporting about Latinos? n78 But read against the background of everyday Latino life, these answers would seem more likely to reflect the simple fact that, until quite recently, the great majority of Latinos have lived closer to and have had much more contact with Anglos than with other Latino groups. n79 And when Latinos indicated a strong desire to learn English, the media treated these answers as expressing an unequivocal desire to assimilate in the strong sense of already having become or wanting very much to become just like Anglo Americans. n80 Yet read against a long history of using both English and Spanish, these answers would seem to reflect more a complicated remaking of American culture than a simple-minded acquiescence in Anglo sensibilities and preferences.

Perhaps the media's decisions simply reveal the presence of too few Latinos on staffs and editorial boards. Certainly those stories at all comfortable with a more intricate view of Latinos were written disproportionately by Latinos. n81 Indeed, Latinos were most prominent among those in the media who raised questions about the coverage of the LNPS. They wondered about the tendency to offer simplistic takes on complicated groups of people; they worried about the impact of such reporting on the image of and future interest in Latinos. n82 In the world of the media, perhaps particularly among those print journalists most responsible for coverage of Latinos, the very concept of diversity seems only tenuously to have taken hold. n83 From this perspective, coverage of the LNPS may simply have been another in a long list of casualties.

Yet trying to assign a single ideological explanation for the media's coverage may well be futile. n84 Certainly we should avoid the national penchant for simplifying complex issues - you know, "one cause, one blame, one corrective program, and let's get on with it." And, in a similar vein, stressing the absence of Latino journalists as pivotal in the coverage of the LNPS seems naive and perhaps disingenuous. Certainly it ignores coverage by Latinos and Latino publications that mimicked or at least paralleled non-Latino coverage of the LNPS. n85 What we may all need to confront is the degree to which the media's judgments say something about us all. And it is not very flattering.

Still, the LNPS authors seemed to have played their own role in the media coverage. From the book's opening sentence, they seem focused on assuaging concerns about Latinos. (Or in the words of one 23-year-old Colombian observer, they seem to have assumed an "apologetic posture." n86 ) The ready-made quotes they provided stressed findings that, they emphasized, should set Anglo minds at ease. n87 Don't fear us, seemed to be the message. Still the survey's authors seem to disavow any role in the treatment their survey received. In response to questions about the media's tendency to misconstrue the LNPS, one of the authors said, "We put out facts. n88 People are misinterpreting these facts according to their own agenda." n88 And some six months after their own highly successful news conference, another author emphasized the one-sided, ideologically-driven portrayals of complex data. n89 But the authors sell their own influence short. Their selections of findings to accent and to downplay - both in their book and certainly in their dealings with the media - would seem to have established the very patterns the media traced from the day of the survey's release. Perhaps originally the authors merely were responding to caricatures of Latinos propagated for decades. But the release of the LNPS seemed only to feed the media's tendency to pigeonhole. We may be dealing with an instance of circular causation: The
authors and the media immediately reinforced one another’s ambitions, creating a pernicious multiplier effect. Indeed, the media and the authors seemed to be acting in concert, not in the vulgar sense of an explicit agreement, but in the more mundane sense that their respective agendas happened to coincide. Both set out to correct what they regarded as pervasive typecasting of Latinos; both hoped to make a splash with their stories. And, more than each would care to admit, both appear trapped by the very stereotypes they aimed to rebut. We are all only left to wonder whether we too are caught in this vicious cycle.

II. ALTERNATIVE APPROACHES TO LEARNING ABOUT LATINOS

To advance our understanding of Latinos, we must begin to cultivate fresh approaches. We must build on the contributions of studies like the LNPS without becoming enmeshed in the very same sequence of caricatures and counter-caricatures that dominates so much contemporary thinking. Shoultering the responsibility for developing creative lines of inquiry will require considerable resources. And ultimately it will demand the input and reflection of a wide assortment of people, organizations, and institutions. Meanwhile, we can "rough out" some speculative ways of defining certain dimensions of life central to the LNPS and presumably pivotal to many future research efforts. Examining some possible views of political community, citizenship, self-identification, race, assimilation, history, and language n90 may together suggest reinvigorated possibilities for making Latinos matter.

[385]

POLITICAL COMMUNITY

The authors of the LNPS emphasize that "overall these groups [Mexicans, Puerto Ricans and Cubans] do not constitute a political community." n91 This view seems immediately to have found a wide audience. Many members of the media embraced the idea, as if it confirmed their own suspicions. n92 And many quarters interpreted the finding as an indictment of both existing identity politics and current Latino political leaders. n93 Certainly, the LNPS authors did nothing to deter these responses. Survey results discredited, the authors insisted, the very possibility of political mobilization centered around "narrow ethnic appeals." n94 The public was reassured that, in the authors' own words, "there is no evidence here of values, demands, or behaviors that threaten the nation's cultural or political identity." n95 By any standard these are very strong claims. We would expect to find in the survey powerfully persuasive proof, particularly given the care with which the authors and their consultants approached the design and implementation of the LNPS. Instead, the authors base their judgment on responses showing that Latinos do not share a common self-identifying label, do not have a sense of shared "culture," and do not consistently form consensus on policy issues. n96 These are interesting data, to be sure. But they seem a surprisingly flimsy body of evidence from which to draw such provocative inferences, especially if you are a team of social scientists challenging the carelessness with which assertions have been historically made about this country's Latinos.

[386] But the trouble with concluding Latinos do not constitute a political community runs deeper still. With some notable exceptions, relatively small numbers of Mexicans, Puerto Ricans and Cubans have historically interacted in any sustained way. Indeed, the LNPS itself asked several questions whose answers would seem to confirm, to use the authors' term, this "lack of intergroup contact." n97 Why then would anyone expect people of Mexican origin in small town south Texas, rural northern New Mexico, and metropolitan Southern California to share a common self-identifying label? Or expect Mexicans in the Southwest to share a culture and form a political consensus with Puerto Ricans in New York City or Cuban exiles in Miami? Why should it surprise that a national survey would reveal something less than ringing Latino solidarity?

The LNPS does not flow from any coherent theory of political community - at least not one discernible in the survey itself or the text of Latino Voices. The authors never explain why they treat answers to three questions as reliable proxies for the presence or absence of "political community." Think only for a moment about all they have left unsaid. When the authors speak of "political community," do they mean a new racial or ethnic group with common traits, customs, and cultural characteristics? Do they mean a community for all political purposes? Diverse groups can sometimes mobilize for certain political purposes and still fall considerably short of forming a new racial or ethnic community, much less one for all purposes. Of course we refer rather naturally to the United States as a political community though it is comprised of people who would likely give wildly dispetto answers to the three questions in the LNPS. n98 So are we to conclude that by "political community" the survey's authors mean to evoke something tighter and more coherent than the national (or a state or a regional) political community, something more akin to a highly homogenized ethnic group with highly particularized political ambitions?
Over millennia social reality has made plain that the idea of "political community" is complex, elusive, and evolving. Wouldn't a group of scholars interested in determining whether such a community can be said to exist among groups of Mexicans, Puerto Ricans, and Cubans want to make explicit their own assumptions? Wouldn't they want to explain why they regard the answers to some questions and not others as trustworthy indicators of political community? Wouldn't they want to specify precisely what vision of political community informs their survey and supports their inferences? No, we don't need them to write a treatise on political theory. We do need their help, however, to understand their approach and to evaluate their bottom line. Otherwise, their views are likely to be accepted uncritically or appraised unfairly.

But perhaps I'm asking the wrong questions. The authors' image of a political community may have little to do with intelligible political theory. Instead, their expectations and opinions reflect their strong desire to rebut certain prevalent stereotypes about Latinos. Time and again, the authors seem to be stalking certain popular myths: the monolithic nature of the Latino population, the movement-like quality of Latino politics, the sePrist ambitions of Latino citizens and residents, the racially divisive influence of Latino solidarity. More than anything else, a yearning to disprove these beliefs with "hard facts" appears to have shaped both the content of the survey and the interpretation of its results. "Ease your mind," the authors seem to be saying, in boldly emphasizing the absence of a political community. "We're not even like one another," they want us all to realize, "much less a threat to the cultural and political integrity of the nation." n99 To be sure, guessing about the authors' intentions entails more gap-filling and dot-connecting than seem wise. Still, such an explanation illuminates the authors' impulse to issue overstated and unsupported conclusions about limited and ambiguous data.

I admit to disappointment in a possibility forsaken. The LNPS provided an unusual opportunity to get beneath familiar rhetoric - whether it comes from the right, the left, or the center. The authors might well have helped us grapple directly with what Latinos themselves think about the realities of and the possibilities for a Latino (and not "just" a Mexican, Puerto Rican, or Cuban) political community. That prospect seems to have been squandered. Maybe it was frittered away by an unselfconscious preoccupation with stereotypes about Latinos and by the failure to think through how best to explore the very existence of a political community across national origin boundaries. At any rate, for all the hyperbolic statements made by the authors and the media, the LNPS didn't teach us very much about what Latinos think of a Latino political community. That seems wasteful, even lamentable, particularly for a survey that espoused letting Latinos speak for themselves.

Things might have been different too. Picture the beginnings of alternative approaches - if not in surveys like the LNPS then in other sorts of studies. While history and geography do tend to sePrist [388] Latino groups in the United States, there are places where different Latinos are in contact (Chicago, Washington, D.C., New York, San Jose, Los Angeles, to name only the most obvious), where groups do interact. In Chicago, for example, where meaningful concentrations of Puerto Ricans, Mexicans, Cubans, and Central Americans now live, claims have been made, by residents and scholars alike, that coalitions have emerged and a Latino community has begun to evolve. n100 Why not generate clusters of questions that test these claims? And, yes, by all means test them honestly, with an eye toward what Latinos actually think and do, not looking simply for ready-made rebuttals to stereotypes or, for that matter, self-serving evidence of pan-ethnic claims?

In Washington, D.C., where national-level Latino organizations regularly operate, informal reports tell of explicitly shared interests. At colleges and universities across the country, where maturing Latino populations of students, staff, and faculty continue to diversify, alliances are said to be developing. And, in the area of culture and the arts, the very term Latino is thought by some to have become an identifying label for projects or collaborations with a non-nationalist pan-Latino perspective. Why not investigate the accuracy of these reports and impressions? Why not put squarely into issue precisely what some celebrate and others seem to fear? Why not go precisely where Latinos themselves insist there is political community - where economic, legislative, bureaucratic, intellectual, cultural, professional, and social aspirations seemingly draw us together?

Of course we all likely have predictions about what we would learn from such an alternative approach. I can't help but think findings would be confusing and contradictory, offering tentative support for quite diverse views of political community. They would reveal, I believe, the very idea of political community to be considerably more situation-specific than the LNPS authors presupposed. Coalitions, alliances, communities are by their nature messy enterprises - even within national origin groups. Political community is ultimately a practice, not a disembodied theory. What meaning it may have must find its origins on the ground. We must look to specific struggles and particular neighborhoods. We must look to where
people coexist - confronting and avoiding conflicts, hammering out and ignoring the possibilities for political compromises, rallying against and succumbing to common foes, clinging to and neglecting overlapping ideals.

But I certainly can't confirm or discard my own suppositions on the basis of what the LNPS has to say. And neither can anybody [*389] else, including its authors. That's the shame of it all. They seem to have neglected some of the principal Latino experiences from which we could begin to get a better handle on "political community." That's what happens, it would seem, when we fail to adequately scrutinize the hypotheses that tacitly drive our production of knowledge. And that's true whether we're talking about the straightforward questions and matter-of-fact interpretations said to characterize surveys, the flights of the speculative fancy often at the heart of distinguished fiction, or methods central to any other imaginable way of learning. By paying too little attention to what's driving our assumptions and judgments, we can easily end up dulling rather than sharpening the very curiosity we need to better understand Latinos.

CITIZENSHIP

Both the survey's authors and the media often seemed to embrace the basic assumption that people are always one thing or another. In their eyes, Latinos identify themselves as Mexican American or Latino. They label themselves conservative or liberal. They accept or condemn immigration. They favor or oppose abortion. They yearn for or reject assimilation. Perhaps this tendency simply reflects survey methodology, since it seems not always to reflect the more personal views of the authors themselves. n101 By its nature, research like the LNPS tends to codify people in sharply delineated, even mutually exclusive categories. Whatever its limitations, such research may be said to offer special insights precisely because people must make hard choices in describing themselves.

But the tendency to categorize people as one thing or another reflects beliefs deeper than, though perhaps related to, an allegiance to particular social science methods. The concept of a person as a "unified subject" - an autonomous, coherent, consistent, and definable whole - has deep roots in Western thought. n102 Indeed, nation states have long conceived citizenship around such a model. n103 Nations are seen as comprised of national subjects, each of whom embodies the national language, the national culture, and often the national religion. n104 A nation's cohesion and integrity are imagined [*390] guaranteed by the homogeneity of its citizenry - yes, including its racial homogeneity. n105 And in democratic systems, the equality of citizens is often thought insured (or even measured) by their linguistic and cultural similarity to one another.

Of course, history reveals just how much this model reflects a deeply tragic irony. Our concept of citizenship derives from what were originally structures of exclusion in modern nation states. When the country was founded, rights of citizenship were granted only to those among the nation's inhabitants who really mattered - literate, property-owning white men. n106 Relying upon genetic, cultural, and Divine justifications, formal laws and informal conventions continued throughout most our history to treat women and people of color as undeserving of the very equality said to be central to national membership. If the image of a homogeneous, fraternal citizenry can be described as linked with a desire for producing universal equality, it was every bit as much a particular group's way of securing and insulating its own privilege. Our noblest political ambitions find their origins in a profoundly sullied past.

History reveals, too, just how vehemently our country has often resisted the contrasting idea that the definition of a worthy citizen might be dynamic and ever-changing. When the various races and nationalities that comprised Israel Zangwill's The Melting Pot seemed threateningly multicultural, Anglo-conformity was asserted as both a principle and a practice. n107 The message thundered. Immigrants fit for citizenship must look forward not backward, must shed their skin, must entirely acquiesce in the American way - which is to say, Anglo-American ways. n108 When Anglo-Saxon Americans "talk of the melting pot they mean by it a process in which the differences of the immigrant races will be carried away like scum, leaving only the pure ore of their own traits." n109 Cultural pluralism nonetheless asserted itself, in fact and over time, as a countervailing model of [*391] how to conceive of citizenship. n110 But, even today, Anglo-conformity strongly shapes the national consciousness, sometimes mourning its own demise, sometimes informing voter preferences, and even more often serving as a "gold standard" against which cultural pluralism must measure itself. n111

This prototype of national citizenship - of a nation's membership whose strength lies in homogeneity - deeply shaped both the design and the public reception of the LNPS. That those Latinos surveyed thought everyone residing and working in the United States should know English, for example, was often read as meaning that everyone should speak only English. n112 But theLNPS results say something quite different, as the authors themselves sometimes
stressed. n113 Sizeable majorities (80-88%) supported bilingual education, mainly (70-77%) for purposes of maintaining two languages. n114 Majorities in all three groups opposed English as the official language and requiring English in work places. n115

It should have come as no surprise that those Latinos interviewed would not equate speaking only English with citizenship or patriotism. For generations, bilingual Latinos have worked in government, served in the armed forces, and proudly participated in the political process. And it should not have shocked the survey's authors or the media to learn that Latinos see absolutely no contradiction between citizenship and fidelity to more than one language, culture, and national origin. When so many Latinos have sided over decades with undocumented workers and political refugees, they seem to have defied hallowed views about how this nation should [*392] understand itself and how it should conceive of membership in the national community. n116

Future approaches to learning about Latinos will have to accommodate this heterodox vision of citizenship. At the very least, research efforts cannot mechanically invoke the tired notion that people must be one thing or another if they are to be understood as anything at all. Apparent quarrels, conflicts, and contradictions may well provide points of reference and sets of linear relations for many scholars and policymakers struggling to interpret the political world. But in the citizens' constitution of the state and the state's constitution of citizens, these oppositions become the very everyday entanglements that, at least in the view of Latinos, must be understood as basic facts of life. n117

To discover that groups of people (Latinos and perhaps others) may well embody seemingly contradictory allegiances and ambitions is only to remind ourselves of just how complex community has always been. The United States has never been a perfect unity; it always has been a unity of diversity, where some things are shared and others are not. In thinking of ourselves as "we," those of us in this country must learn to come to grips with a concept of citizenship more dynamic and perhaps unruly than classical political theory or conventional survey methodology has learned to embrace. n118 Otherwise we certainly will never understand Latinos, and we may never understand our own national experiment.

SELF-IDENTIFICATION

In asking those surveyed to choose between national origin labels (Mexican American, Puerto Rican, Cuban) and pan-ethnic labels (Latino, Hispanic, American), the LNPS seemed determined to answer, once and for all, a much debated question: Which name do those we sometimes call Latinos prefer to call themselves? To the surprise of few who have studied the issue, those surveyed ranked their own respective national origin labels first and pan-ethnic labels second. n119 More eye-opening than these results is the degree to [*393] which the survey's authors remained stuck in the idea that Latinos must call themselves one thing or another. They never seemed fully to consider the possibility that Latinos might use more than one label depending upon the circumstance. And they never made provisions for studying how context might influence the names we choose for ourselves.

Encouraged by the authors, media accounts repeatedly accentuated the fact that those surveyed rejected labels like Latino and Hispanic. This emphasis had powerful (and seemingly intended) implications. If Latinos reject pan-ethnic labels, consumers were encouraged to ask, how can activists and scholars lucidly make reference to a "Latino community?" n120 And if there is no coherent Latino community, skeptics might press, how can national leaders and organizations describe themselves as representing any real constituency? Answers in the LNPS indicating a preference for national origin labels were confidently converted into emphatic claims that there is no such thing as a "Latino goal," a "Latino demand," or a "Latino view."

There is a conspicuous incongruity here. After all, the LNPS authors and the media had to refer to Latinos in order to deny their existence as a group. (The authors' book is entitled Latino Voices.) And such denials were almost invariably followed by careful citations of things Latinos do and don't think. (Even newspaper headlines speak of "Hispanic Attitudes," "Hispanic Desire to Assimilate," and "Hispanic Beliefs.") Yet both the authors and the media seemed comfortable with these inconsistencies. So focused were they on unfrocking activists, politicians and scholars, they never much acknowledged, at least at the time, how much their own rhetorical and substantive contradictions betrayed a basic reality. n121 There are in fact both commonalities and differences among Mexican Americans, Puerto Ricans and Cubans. And this mixed-bag of characteristics sometimes may be captured in a pan-ethnic label, [*394] sometimes in a national origin label, and sometimes in an altogether different label still.

Contrary to the basic assumption pervading the design and interpretation of the LNPS, everyday experiences tell us the ways we identify ourselves are both plural and overlapping. Self-identification is, in important
regards, situational: It depends in part on who is speaking to whom, under what circumstances, and for what purposes. A Chicana speaking to a newspaper reporter or government bureaucrat may use the term Hispanic. In another setting, she might speak of "we Latinas." In speaking to other Chicanas, she might use the term Chicana, Mexican American, Mexicana, or chola. Self-designating terms can signal different degrees of inclusion, varying levels of formality, clashing visions of political militancy, contrasting notions of playful banter and racial slurs.

Of course self-identification is, in certain critical respects, self-definition. A Puerto Rican may well find solidarity among other Boricuas, other single mothers, other bisexual women, other Latinas, other Blacks, and other Wall Street lawyers. She may nevertheless regard no one single group as encompassing (or even responding to) her complicated sense of being. Like the rest of us, she is of many worlds, with a need to define herself in various ways and with an intuitive understanding that the labels she finds herself using may well blur important distinctions and shift over time. In such a complex and subtle world, the search for a single self-identifying label - the search carried out by the LNPS and praised by the media - seems fundamentally flawed.

On this understanding, pervasive attacks on so-called "identity politics" - for not just tolerating but underwriting social fragmentation - seem misconceived. If differences are openly acknowledged and promoted, so the argument goes, society dissolves into ever-proliferating identity groups, each necessarily acting narrowly and destructively in its own interest. But the ways we apparently think about and label ourselves lend little support to this doomsday account. If individuals "possess" or "consist of" complex identities, society can hardly be said to fragment simply because those identities find support in group politics and group names of various sorts. No one is a member of only one group - however disaffected she might feel. Indeed, our identities would seem unavoidable exercises in coalition building. Social life is held together not (as critics of "identity politics" insist) by homogeneity but by the dense degrees of overlap between and among identity formations.

Yet such a view does not support doctrinaire celebration. If we cannot expect to learn much about Latinos by asking them to select a label for all purposes (by asking them, in effect, to deny their basic nature), we also should not expect any formulaic answers from even sophisticated efforts to understand how we identify ourselves. Identity can be confusing - not just for survey researchers and the media, but for all of us. Because labels are situational and strategic, they are sometimes blunt and sometimes sharp instruments. They can hurt as well as heal. They can confound as well as enlighten. They can shake up the very idea of who we are - even as they apparently give life to our evolving sense of selves. A healthy dose of awe and humility is, perhaps as much as anything, what we need in order to explore the Pdox of how Latinos, like everyone else, constitute themselves time and again.

Future approaches to learning about Latinos might perhaps proceed from an account of everyday life elaborate enough to embrace the many labels we use and the many reasons why. We differ across many dimensions - class, race, gender, sexual orientation, age, religion, national origin, length and region of residence in the United States. And we differ not just between national origin groups but within them. But these variations do not necessarily make us any less a group. Group identity need not (and probably cannot) imply group homogeneity. In fact, to be at all serviceable, group labels must straddle a wide range of differences. That's true of national origin labels (Mexican, Puerto Rican and Cuban), pan-ethnic labels (Latino, Hispanic, American), and every other sort of label we can imagine. In order to claim with others and for ourselves a name, we Latinos (like everyone else) must inevitably highlight some similarities while downplaying others.

RACE

Just as those interviewed in the LNPS were presumed content to classify themselves as, say, Puerto Rican or Latino, so they were presumed satisfied to describe themselves as "White," "Black," or "Other." Framing the inquiry this way may simply reflect, yet again, the authors' insistence that people are always one thing or another. But in formulating in this fashion the survey's only explicitly race-related question, the authors appear to speak from within a familiar archetype: races seldom mix and, if they do, the one-drop theory reigns (a drop of Black blood means you're Black). The authors apparently never contemplate, and they certainly never explore, other possibilities of reckoning race. They never seem to consider the increasing numbers of the "multi-racial" movement who, particularly in view of increased interracial marriages, resist being categorized (or having their children categorized) as "black" or "white" or any other single racial identity. Even more particularly, the authors of the LNPS never inform their views of race by what appear to be basic realities of and everyday experiences in Mexican, Cuban and Puerto Rican life.
Consider the mestizo (mixed-blood) sense of race invoked by many Chicanos. n128 More than some would care to admit, we often classify or at least treat one another according to where we fall on a continuum from pure Spanish to pure Indian. The continuum, historically grounded in the period of Spanish colonialism, is based only partly on physical characteristics and is as much culturally as racially determined. n129 Claims of being Spanish often have to do [*397] with being regarded as middle class, traditionally Catholic, with discriminating sensibilities - as "gente decente" ("decent people"). Near the other extreme, notions of being "Indian" ("indio") often seem the equivalent of appearing less estimable, devoted to more vulgarized religious mythologies, not very stable working class, even darkly unkempt. In the novel Migrant Souls, the late Arturo Islas captures this mestizo sense of race in the Texas town of Del Sapo. n130 Fair skin, ancestral roots in the conquistadores, blue-eyed Catholic reserve, and carefully cultivated tastes divide family and friends alike. Whiteness, Islas reminds us, is as obviously a valuable form of property in Rio Grande life as it is elsewhere in the United States. n131

Much as he loved the Texas world he dramatized, Islas was among those willing to report honestly the more harmful and capricious sides of this mestizo sense of race. The polarities express the way caste and subordination operate within Chicano cultures. Gradations between the two poles refer to more or less desirable physical features and skin color, more or less esteemed behavior, more or less superior intellect. n132 Moreover, mestizo ways of seeing the world seem to discount how those of us with African and Asian origins and how Mexico's indigenous peoples (some of whom now travel regularly to and from the United States as wage laborers) fathom race. n133 Nor is this mestizo sense fixed. If experience is at all accurate, one does not have to look "indio" to be called "indio," and people with Indian features are less likely to be regarded as "indio" if, say, they firmly establish themselves in the middle class. [*398] And, for better and worse, seeing race is not always or perhaps even characteristically conscious. It pervades idiomatic expressions, popular images, and ideological ambitions in ways that often escape the notice even of those most damaged and degraded.

Whatever we think of this mestizo sense of race, the point is that the authors of the LNPS seemed indifferent to the very phenomena they claimed to survey. They never made central the mixtures that seem emblematic - indeed, so much at the core - of how Mexicans, Puerto Ricans, and Cubans understand themselves in racial terms. They never bothered to ask questions, for example, about mulattos and their racial place in Latino cultures. They never equipped themselves, for instance, to investigate why a majority of foreign-born Mexicans and 47 percent of native-born Puerto Ricans surveyed used Latino, Hispano, or Mexicano as their racial identification. n134 Can it really be true, as I have heard from so many over the years, that the categories black and white and skin color itself as used in the United States are of little consequence to understanding our lives? Or, as others think and I’ve always surmised, do these claims themselves reveal the very complexity of race in Latino nations and cultures? n135

To be sure, Anglo, Latino, Asian, Indian, Black, and other ways still of employing racial categories intermingle here in the United States. To the extent a single question in the LNPS is up to the task, the survey’s authors might well insist they captured one side of an interactive process. But future studies of the role of race should have higher ambitions. We must come more fully to appreciate how race (in its many biological, cultural, and political forms) operates in Latino life - among those who embrace it as a central concept, among those who deny its significance, among those who might well not know exactly how they regard its role in their lives. To what degree are our ideas of race choices rather than responses? In what ways do race, ethnicity, and culture overlap? What do we gain and what do we lose by regarding race as one thing rather than another? n136 Here in the United States, race in Latino life remains too [*399] much outside our understanding. And like so many things obscured, it may well run along fault lines that explain much at the surface.

ASSIMILATION

The survey seemed fashioned to collect data about how much Latinos have adapted to - indeed become a part of - life here in the United States. The moral of the story told by and about the LNPS seems almost unavoidable: Whatever the "old ways," they have been replaced by "new ways," which themselves seem very much like the ways Anglo-Americans have continually gone about their business. It’s easy to have many reservations about this story - about how it was constructed and about how it has been marketed. But, in particular, the survey’s authors and the media have failed to treat the concept of assimilation with the respect it merits. A more refined parsing may well permit us to uncover far more intriguing accounts of Latino life than the LNPS fathoms. Even minimal attention to some apparently highly assimilated Latinos offers insights that might inform future work.

Making judgments about assimilation to the dominant culture requires, some insist, that we distinguish
between various types. Consider the contrast some
draw between structural and cultural assimilation. n137 Structural assimilation refers to a person's
capacity to rise in the hierarchy - what academics
sometimes call social mobility. n138 In the United
States, such mobility requires certain levels of
education, English competence, and a less-easy-to-
define capacity to dress and behave in ways
recognizable as reliably mainstream. n139 Structural
assimilation, however, does not inevitably imply
cultural assimilation. Entering the middle class does
not necessarily mean abandoning one's culture of
origin and adopting wholesale Anglo culture. n140 In
fact, cultures of origin can never simply be left behind.
Even a glance at this country's "white ethnic" middle
classes confirms this point. The relationship between
the two forms of assimilation is considerably more complex, perhaps more counterintuitive, than we
have been led to assume.

Think about several Chicano medical doctors and
social workers I know who practice in Southern
California. They work with ease and success in
predominantly Anglo settings. At the same time, they
socialize with one another and other Latinos, speak
Spanish, and create a distinctively Latino cultural
environment for themselves. Because of the nature of
their professional practices, they deal often with
monolingual Spanish speakers. As a result, their
Spanish actually has become more (not less) proficient
on the job. And their enhanced language proficiency,
to hear them tell it, has perhaps deepened their
attachment to Chicano traditions and stimulated
interest in the customs of Latinos from countries others
than Mexico. Contrary to what classical assimilation
theory would predict, the very fact of having
"succeeded" in the United States seems for these social
workers and doctors directly related to a more
intensified "Chicano-ness" and "Latino-ness."

Or think about teenage Latinos I have met and worked
with in metropolitan areas in the United States. Their
views often debunk the longstanding assumption that
assimilation, traditionally conceived, is the only path to
success for the children of immigrants. These
teenagers believe holding on to their parents' dream of
"making it" means rejecting becoming part of the
"assimilated" crowd whom they associate with
acquiescing in lower expectations of immigrants. They
do not regard themselves as in any way "un-
American." They learn English while able to speak
their parents' tongue. And they hope to succeed in the
United States mainly by applying their parents' work
ethic to education. Remaining "proud of their blood," they prefer their own national origin labels even as
they get themselves ready to ascend the ladder in the
United States.

Obviously, I know people who have "made it" and
want to ignore or even deny their own past. And I can
cite instances of virtually every variation on the
relationship between moving up the ladder and holding
on to the culture of one's origin. Together these
examples would make the basic point. Latino
experiences in this country are manifold; they resist the
tidy story told by conventional accounts of immigrant
assimilation. n141 An increased capacity to function
in Anglo society seems linked in different people with
an enhanced, unchanged, or diminished capacity to
function in Cuban, Puerto Rican or Mexican American
culture. The connection between structural and cultural
assimilation may well be impossible to [*401]
determine once and for all. Such an admission may not
lend itself to cocksure ideological claims. But if future
approaches are serious about trying to get a handle on
Latino assimilation, they must avoid simplistic
formulations. We can no longer assume final answers
to the very questions we need to ask.

HISTORY

All that is reported by those surveyed in the LNPS -
affinities, contrasts, variations among Latinos -
naturally invites attention to the histories of each
national origin group. The questions begin tripping off
the tongue. When did Mexicans, Puerto Ricans, and
Cubans each begin coming to the United States? In
what numbers? With what immigration status? With
what education, job skills, and financial resources?
Where have they lived? Where have they worked?
What has been the relationship over the years between
the United States and Mexico, Puerto Rico and Cuba
and has that relationship influenced the experiences of
those Latinos living here in the United States?

Yet public knowledge of these histories remains
shallow at best. What we know and what gets taught
about Latinos - I'm now talking about 1998, even in
areas of high Latino concentration - should embarrass
those of us with the capacity to influence popular
consciousness. Worse still, the LNPS does little to
reinforce the ease with which nearly everyone
speculates about Latinos without having an informed
sense of what the past may teach us. Instead of inviting
greater curiosity about Latino life - filled with debate
over the course and the impact of historical events - the
LNPS ironically licenses too much of the same sort of
ignorance that prompted its funding in the first place.

The most cursory rehearsal of rudimentary facts
suggests how history might inform much we are
beginning to learn about Latinos. n142 For most of
this century, Puerto Ricans have been American
citizens. And their migration to and from the mainland does not implicate the long arm of the Immigration and Naturalization Service. [*402] Yet automatic citizenship by birth can hardly be said to have erased the colonial relationship between the United States and the island. Even today, the choices between commonwealth status, statehood, and independence seem suffused by the economic, social and ideological consequences of United States dominance and Puerto Rican subordination.

Not surprisingly, Puerto Ricans still tend to distinguish strongly between those born on the island and those born in the continental United States. To some degree, these distinctions seem natural. As many of my students stress, public education in Puerto Rico takes place in Spanish, and the island has its own university system. And those who constitute the growing Latino "urban underclass" seem to have spent more rather than fewer years here in the United States. Yet the boundaries between the island and the mainland seem increasingly smudged. Particularly for the thousands of Puerto Ricans who have migrated back and forth between places like New York City and San Juan, life seems to draw in equal measure on two related through sePble worlds. What it means to be Puerto Rican - on the island and on the mainland - seems very much in dispute, constitutionally and culturally.

The presence of Cubans in the United States is more recent than the arrival of Puerto Ricans. When in 1959 the revolutionary movement led by Fidel Castro overthrew the Batista dictatorship, Cubans began flocking to the United States (especially Florida) in large numbers. Many emigrés were prosperous. And they often brought with them resources reflecting their social and economic status. Generous government subsidies and widespread popular support further facilitated Cuban transition to life in the United States. In the eyes of most Americans, Cubans were fleeing a communist country and their acceptance seemed a palpable way to express a deep antipathy to the Castro regime. By any measure, Cuban successes in the United States have been noteworthy and celebrated. As a group, they now possess significant economic resources, unusual political clout, considerable visibility, and even a certain social cachet. Press surveys reveal that, though Cubans still represent only a small percent of the Latino population, they are spotlighted by the overwhelming majority of national news stories focused on Latinos. Meanwhile, the past decade or so has seen the emergence of an intriguing diversity in the Cuban community. More recent immigrants - disproportionately young, unskilled, darker-skinned - have found adapting to life in the United States considerably more difficult than their predecessors. And some younger Cubans, raised in the United States, seem less preoccupied than their parents with fighting communism and more concerned with issues affecting all Latinos in the United States. [*403] Thirty years after fleeing a revolution, Cuban Americans may well be creating a community as complex as the society the first refugees left behind.

People of Mexican ancestry constitute the vast majority of the Latino population. A relatively small number have lived in what is now the territorial United States in settled towns since the 16th century. Indeed, for some inhabitants of the Southwest, the historical experience was one of standing still while the border moved southward, transforming them from Mexican to United States citizens. (The Treaty of Guadalupe Hidalgo, signed in 1849 at the end of the Mexican American War, ceded what is now California, Texas, New Mexico, and Arizona, and parts of Colorado, Utah and Nevada to the United States, and gave all Mexicans living in these areas the option of becoming United States citizens or of relocating within the new Mexican borders.) At least at its roots, this is a story of conquest as much as it is story of immigration. Nor is it one of simple or pervasive assimilation, as anyone who travels to the towns and villages of northern New Mexico and south Texas can testify. Even those Mexicans who have come to the United States as immigrants have not entered an entirely foreign land. Nor have they come to a country that did not actively encourage their migration (legal and illegal) whenever it suited its own purposes. The United States has derived, in part through the subtle manipulation of immigration law, extraordinary economic advantages from Mexican laborers, while employing familiar chauvinist propaganda and affirming the inferiority of yet another mongrel group. Perhaps the use of Mexican labor over the years is accepted as simply pursuing the opportunities of an open economic system, while putting people to work who cannot otherwise find employment in their country of origin. Yet any fair reading would seem impelled to conclude that events for over a century have revealed a dramatic mismatch of bargaining power with the United States (and, in many ways, Mexico) insensitive to wrongs done the Mexican worker along the way.

In any event, over the years millions of Mexican wage laborers made the United States their home. Their presence has had tremendous economic, social and demographic impact in many states and, increasingly, in many regions of the country. It has become almost commonplace to point to states like California, where Mexican-origin people are totally remaking the
political map and the calculus with which one plans for the next century. But in other states, like Illinois and Kansas and Washington, the Mexican population is continuing to grow at a rate that would surprise all but the most careful demographers. Of course, sheer numbers overstate the cultural and social influence Mexicans have been able to achieve, at least if one counts national visibility and conventional political clout. But few [*404] would underestimate the future influence of Chicanos, dynamic constituents in virtually every imaginable way.

These sketches cannot begin to offer a fuller picture of these histories, much less put into circulation varying accounts of how things happened and why they are as they are. Still, they hint at what we all stand to learn both by beginning to take full advantage of information already out there to be disseminated and by committing ourselves to developing even deeper and broader and more accessible accounts. We should not believe any group is reducible to its past. Nor should we insist that every contemporary event is merely the predictable outgrowth of some earlier incidents. But we simply cannot claim to understand Latinos - on their own terms or in their own voices - without a serious grounding in the histories that have established the patterns and conditions through which life continues to evolve.

LANGUAGE

Many believe language serves as a central fulcrum around which other dimensions of Latino life revolve. Certainly concerns about assimilation, social mobility, and political power often pivot around our linguistic competence. Indeed, whenever views circulate about how Latinos are faring in the United States, language seems to elicit considerable apprehension. Studying language - ours and anybody else's - is endlessly complex. But we know enough to piece together a rewarding contrast between the approach pursued by the LNPS and approaches that might be constructed in the future. The promise in these alternative approaches highlights the relevance of a familiar axiom: How we ask questions often determines what we end up learning.

Most people in the United States seem to accept English monolingualism as the model - at least whenever citizens are dealing with their government. n143 Perhaps they hold this view because they consider themselves part of a nation of immigrants: They regard the exclusive use of English as fundamental to the nation's social cohesion. n144 At any rate, English has long been the de facto national language. In fact, except for the brief study of foreign languages in school, in many ways bilingualism still seems actively discouraged. n145 The story of being punished for speaking a language other than English on the school grounds is one shared by many generations of Americans of all ethnic backgrounds.

n146 In some circles, this experience is even thought to serve as one of the "ties that bind" an otherwise diverse citizenry. It's not hard to see why battles over bilingual education have been described as a "status conflict." n147

But those who live within this monolingual view of the world often mistake our own past. The myth persists that early immigrants, particularly Europeans, quickly learned English and abandoned their mother tongues. This conviction finds little support, however, in the historical record. Evidence reveals that most groups used and maintained non-English languages in their homes and communities for decades. n148 Just as those who subscribe to a monolingual ideology misperceive United States history, so do they often misapprehend what's going on in the rest of the world. Speaking only one language is "characteristic of a minority of the world's peoples." n149 By one count, there are 160 nation states in the world today, between 5,000-8,000 ethnic groups live in those nations, speaking over 4000 distinct languages. n150 Each of the world's nations has groups of people living within its borders who use a language other than or in addition to the national language to function in their everyday lives.

But those in the United States who see monolingualism as an ideal probably correctly intuit the geo-politics of language. For the many tongues actually spoken in the world, most nations are officially monolingual. Their laws and institutions employ only the dominant or the designated official language in interactions with citizenry. In the course of carrying out this language policy, these nations often run roughshod over the needs, sensibilities, and aspirations of those who use another or more than one language. n151 Indeed, they typically don't appreciate bilingualism, don't try to understand those who speak more than one language, and seldom scrutinize their own assumptions about how language does or should work in their communities.

That the LNPS at all evinces an allegiance to this monolingualism comes as something of a surprise. I have no reason to believe the authors are not themselves bilingual. I have no reason to believe the authors are not in favor of bilingualism. And, to their considerable credit, they gave those surveyed the choice of being interviewed Spanish or English. n152 Still, even if against their will, the LNPS occasionally reflects a monolingual perspective. Certainly the ways in which the authors encouraged others to interpret
data sometimes betrayed misunderstandings about the nature of bilingualism, fear of the consequences of bilingualism for the national community, and acquiescence in the normative claim that monolingualism ought to be the goal to which all individuals should aspire. Even people sensitive to and supportive of bilingualism, even people who are themselves bilingual may nonetheless study language principally as an index of assimilation.

Scrubbing language from this perspective masks the complexity of what we call bilingualism. As much as remains to be studied, research already tells us that bilinguals differ from monolinguals, apparently even in the way language is distributed in their brains. Bilinguals come in different types, with different proficiencies and experiences, which themselves change over time. Some immigrant bilinguals "boot up" in their first language even long after English has become their stronger language. Others count or pray in only one of their languages. And bilingual aphasics who have suffered injury to the left hemisphere frequently retain receptive and productive abilities in one of their two languages. n154

Without some attention to the biological nature of bilingualism - to how bilinguals process and store information, to how they keep their two languages apart, to whether their two language channels operate independently of each other - LNPS questions reveal less than they might about Latino use of language and Latinos attitudes toward both English and Spanish. When Latinos have responded negatively to employers requiring the exclusive use of English in the workplace, for example, their responses might perhaps chiefly reflect a practical recognition of their everyday habits. Living in a largely bilingual world, they frequently draw on two languages in the course of their interactions. Not accustomed to strictly monitoring their language choices, they might well resist policies that would force them to consciously police themselves from ever slipping into Spanish - even if it's "only" slang or a phrase here and there. To be sure, practical resistance often results in the formal assertion of legal rights. But only what might be called a bilingual perspective on language would unpack the relationship between the two, informing our understanding of both language use and political theory along the way.

Just as studying language from a monolingual perspective conceals the biological origins of language issues, so too does it ignore the reality of how language works in Latino communities. In order to interact successfully, we are often called upon to deal with a wide range of other Latinos: youngsters who are in the process of acquiring English, newly arrived immigrants who are Spanish monolingual, second- and third-generation teenagers whose Spanish is almost non-existent, bilinguals fluent in both languages, seniors who acquired English years ago yet still feel more comfortable expressing themselves in Spanish. Obviously some of us are better equipped than others to handle all these interactions. Still, we must deal, like it or not. An appreciation of this reality - a self-consciously bilingual take on Latino life - would expose more about how Latinos (and non-Latinos) with varying degrees of bilingual expertise handle disPte everyday situations. For all we know, such studies might well change our image of what it means to be socially competent and our profile of what it means to be socially mobile.

Understanding the challenges of bilingual communities might well transform how we describe attachments to language. Experience suggests that Latinos, perhaps like other bilinguals around the world, use two languages mainly because we must. Some Latinos I know insist on being bilingual principally as a political or cultural statement. But most do not. They are bilingual more out of necessity than anything else. They have relationships with people who speak only one of two languages, and they interact regularly with others whose linguistic repertoire includes two codes rather than one. One language will not do to meet all these communication needs. Besides, there's fun along the way. In communicating with other bilinguals, Latinos switch languages within and between sentences; we experiment with Spanish and English, drawing on both to argue, persuade, console, and amuse. In participating in two linguistic worlds rather than one, Latinos transform each along the way. And we do so principally because we must: Social demand more than ideology would appear to be the mother of bilingualism.

Studying bilingualism from a bilingual perspective helps to clarify why, as the LNPS itself discovered, Latinos believe everyone should learn English and, at the same time, support bilingual education. n155 We characteristically want our children to be bilingual so they can be a part of - and not in any way find themselves excluded from - the linguistic worlds in which we live. From this angle, it is perfectly sensible to support learning English, tax-supported public services in Spanish, and bilingual education. We frequently want our children to learn two languages and not just one, and we want members of our community to be informed and able to cope. Far from manifesting contradictory attitudes, those surveyed by the LNPS may simply have made plain the nature of their linguistic communities and the complexity of bilingualism.
These days, the term bilingual is often used (at least when referring to Latinos) as a euphemism for the poor, the uneducated, the newly arrived. Speaking a language other than English has become the vehicle, think some, for mobilizing anti-immigrant, anti-underclass, anti-minority sentiments. n156 Students who don't speak proficient English, we're told, present profound difficulties for educational systems ill-prepared to educate youngsters in a language other than English. Employees who speak proficient but accented English, we hear, poorly serve businesses, particularly where customers insist upon service workers who speak English in crisp, "unaccented," American tones. n157 Studying language from a bilingual perspective won't alone change the underlying hostilities and fears that impel the insistence on one-nation-one-language ideology. Nor will it necessarily usher in a more pluralistic embrace of a bilingual world. n158 But we might at least help ourselves understand how our communities work, how policies (from standardized testing to English-only) intersect with our ways of dealing in the world, and how we might open greater curiosity about what many of us see as among our many strengths.

III. THE NEXT PHASE OF LATINO LIFE

Along with the authors of the LNPS, I believe we Latinos express views that cannot easily be squared with either familiar world [*409] ideologies or conventional American party politics. We seem to be approaching our lives and our country from constructively iconoclastic angles - angles that reflect perhaps more a response to our conditions than a choice of fashionable philosophy. Unlike the authors and other interpreters of the LNPS, however, I believe that trying to discern evolving Latino attitudes through stereotypes or counter-stereotypes is precisely to miss what may well be most original about our situation. In light of the ambitions that seem to have informed the LNPS, it would be a sad injustice to neglect what makes Latinos so distinctively American.

And, indeed, we seem to have entered a new phase. In the last several years, efforts to elect Latino candidates have begun to pay off. Voting rights lawsuits, voter registration crusades, community education programs, get-out-the-vote campaigns, and determined lobbying have together put more Latinos on the ballot and in office. n159 But it would be a big mistake to treat these achievements as anything but modest and long overdue gains. In no area of the country can we be described as adequately represented by and in the governing political institutions. Certainly, the percentages of Latino elected officials still do not approach the percentages of Latino inhabitants in the population at large. For that matter, gains in representation have by no means insured changes in governance. Just check out the many problems in Latino communities for which the state still seems unwilling to respond.

Latino perspectives on American politics comprehend these mixed results, at least if LNPS data offer a reliable account. We seem to appreciate the enhanced possibilities for full incorporation in the body politic and the arrival of fully representative political institutions. At the same time, we seem to understand the continuing need for those legal, political, economic, and cultural mechanisms that, in recent years, finally have begun to counteract a history of marginalization. Government can help us make a difference, but only if we vigilantly police its policies and practices. In the LNPS terms, Latinos may "love" and "feel pride in" the United States, but we trust government officials "to do what is right" only some of the time. n160

While the LNPS authors and spin meisters were busy chiding established Latino leaders and "politically correct" scholars for not having acknowledged the absence of a coherent pan-ethnic community, those Latinos surveyed seem to have been trying through their [*410] self-respecting skepticism to stress a newly emerging challenge. We're no longer a people entirely on the margins of American society, those interviewed appeared to be saying. Having made political and social advances, how can we legitimately focus all our social justice claims around the idea of unjust exclusion? We're not the first minority to confront such a challenge. African Americans have faced this predicament, for example, and they seem of many minds about the quandary and how they have managed it. n161 At any rate, we Latinos seem perhaps already to be trying to come to grips with exactly how our successes influence the ways in which we have historically marshaled our resources and articulated our positions. When those surveyed in the LNPS seem to be telling us that we may already be in the next phase of Latino politics, it seems important both to heed their message and to wonder provisionally how we might negotiate the transition.

Some pressures seem evident. Everywhere from Washington D.C. to small towns, for example, forces hostile to change seem to be telling Latinos "through elections and appointments, you've made it into the room, so now sit down and shut up." n162 This demand, in turn, produces a fair amount of consternation and pessimism, at least among Latinos I know. They do not want to deny our new successes. But they certainly never imagined victory meant little more than becoming part of business as usual. They
end up spending a fair amount of time and energy trying to fashion inventive answers to more or less the same question: How can we avoid being entirely co-opted without employing rhetoric far more suitable to those despicable days when there wasn't a Latino face to be found in nearly any decision-making body?

To some degree, we Latinos may simply find ourselves in the process of taming our own exaggerated expectations. Perhaps we clung to an over-the-top sense about what it would mean finally to integrate political life. Not too many years ago it was still easy to believe that being represented was nearly tantamount to tending a group's needs. In retrospect, such views seem innocent and romantic. But they did explain for Latinos why for so many years "Anglo America" seemed so relatively well served by the business of politics. We have become increasingly savvy, however. Many of us now know representation means winning a seat at the table, a voice [*411] in negotiations over policy, a chance to advance the interests of the represented, and the opportunity to persuade others to join in their support. "Minority representatives" still remain minorities, we now realize, often lacking the numbers to win majority votes and the resources with which to address the very concerns that prompted the need for representation in the first place.

If this lesson in realpolitik has not always been good news, it certainly puts a fine point on the nature of American social life. Once upon a time Latinos, like other oppressed groups, might well have been inclined to say "we want no part of coalitions." We assumed a stable solidarity within our own group and, when it seemed shrewd, did our best to project a monolithic unity. The world is no longer quite so ingenuous, and I doubt it ever was. Nowadays it is painfully evident that we Latinos can't function productively as part of our own national origin group (much less as part of a wildly more diversified body politic) unless we are willing to do some serious coalition work. And that, as any sane person should realize, is nothing but painstaking. n163

Just as Latinos are beginning to accept the inescapability of coalition work, we seem simultaneously to understand our capacity to act as something more than an "interest group." Those who authored and many who interpreted the LNPS juxtaposed Latino values and "core American values" - wondering how the one compared to the other. But the last several years reveal how much the very structure of the American mainstream is itself up for grabs - whether we're talking about women's rights, education, ecology, sexual liberty, religion, taxation, or the responsibilities of government to those within its geographical boundaries. Some numbers of Latinos already seem to appreciate that the entirety of political life is no less a matter of coalition and persuasion than life within our own national origin groups. And that realization itself may initiate an entirely different approach to our role in this country.

In order to shape mainstream views, we Latinos need to take ourselves seriously enough to offer our own comprehensive vision of what this democracy should look like - not just about a set of high profile "minority" issues, but about life for everyone who calls this country home. n164 This is a tall order, I realize. Broadening America's vision of itself ultimately means getting many powerful groups to abandon the (often unconscious) assumption that their sensibilities speak to everyone's needs and aspirations. At the same time, a willingness to chart a course for all people in the United States [*412] means getting more Latinos than ever before to abandon the (often unconscious) assumption that politics can never be anything but a battle of raw self-interest.

Of course, Latinos have had considerable experience in fashioning coalitions. At local levels and in international circles, we have helped piece together compacts ranging across economic, social, cultural, legal and political domains - including trade, labor, criminal, health, and religious issues. From hard experience, we have begun to appreciate that coalition politics often requires compromise. And we have reminded ourselves that coalitions, at least at their best, are something more than apprehensive alliances of segregated enclaves. At the same time, Latinos have played bigger roles in shaping substantive visionary statements than perhaps most people in the country realize. In taking stands on Supreme Court nominations and legislative proposals, we have begun to develop our own distinctive views of constitutions and legal jurisprudence. In pushing for employee stock options and worker cooperatives, we have moved to democratize markets, demanding that standards of equality and participation be extended to economic life and not just a narrow sphere of government. And in refusing to abandon our languages and traditions, we have staked a claim to a culturally pluralist society that deliberately structures institutions so that all communities and social classes share prestige and respect.

For all this experience, we certainly have not been encouraged to take the lead in building visions of America's democratic future. To some degree, perhaps we have brought this upon ourselves. To the extent we have continued to regard our "interest group" politics as both entirely consuming and inconsistent with a more comprehensive agenda for the national...
community, we may well have failed to seize opportunities for taking the lead on behalf of the entire nation. But more frequently our attempts to articulate larger visions of the United States have fallen on deaf ears. Too many non-Latinos seem unwilling to imagine Latinos as creators of the mainstream - as national leaders, as originators of popular culture. And too many non-Latinos continue to box Latinos into the very same narrow brand of "identity politics" they themselves so high-handedly condemn.

If indeed we find ourselves in the next phase of Latino politics in the United States, it is testimony to what Latinos have come to understand over the years. Never expecting to be invited to play a major role in this democracy, we nevertheless have taken it upon ourselves to make the most of our situation. We have astutely been unwilling to abandon our embrace of "interest group" thinking. Yet we have not deluded ourselves into believing there is anything like a safe retreat from messy coalition work. While we have wisely refused to accede to demands to become exactly like Anglos, we have [*413] also been eager to declare openly our affinities with non-Latinos, our loyalties to our country, and our willingness to pitch in and lead.

CONCLUSION

If, like me, you count yourself among those who want to create and circulate knowledge about Latinos, then together we owe the authors of the LNPS a debt of gratitude. They thought big. They hustled serious dollars. They consulted other skilled experts. They rounded up capable staffers. They surveyed a wide-range of carefully selected respondents. They promoted their new treasure-trove of information. They campaigned for their own interpretations. They managed to get people to pay attention, at least for a while and perhaps, for all we know, in an importantly different way. By widening in the public imagination what Mexicans, Puerto Ricans, and Cubans stand for, they showed us one powerful way we might help make Latinos matter.

Indeed, from my perspective, the LNPS remains in some ways underappreciated. That certainly isn't the authors' fault. As promised, they have produced an impressive literature dissecting the survey data, exploring themes they initially downplayed, deepening their analyses of topics they already had addressed in earlier work. n165 Meanwhile other scholars have now begun to offer their own views, challenging and refining the authors' interpretations, doubtlessly creating new lines of inquiry along the way. n166 Still, much more can be said - and needs to be said - about each of the survey's many particular findings, about its significant contributions to preexisting bodies of research, about its role in the related worlds of research, policy making, and public opinion. A research tool of genuine significance demands our close and sustained attention.

[*414] Yet we already have learned a great deal, and not just from what the data tell us. How the LNPS was assembled, boosted, and received is as much a cautionary as a triumphant tale. Much remains to be unearthed, but some implications seem unavoidable. In the name of putting an end to disreputable portrayals of Latinos and Latino views, the authors' own conduct encouraged too much of the same. They watched while others almost immediately used the LNPS as a source of prefabricated Latino opinions. After the fact, they sometimes mildly protested. But they themselves had established the precedent in the course of marketing their product and pushing their own views. Often enough the authors acted as if a definitive Latino vote had finally been taken on a wide range of exceedingly complex issues and highly particularized proposals. Little wonder others followed suit.

Yes, I realize, glitzy exaggeration seems to be the way of life these days. And the authors of the LNPS can hardly be expected to control or change all that surrounds them. But that sort of rationalization for what happened, in the survey and through the media, borders on the cavalier. Searching hard for something authoritative to say, the authors sidestepped many of the intricacies that give everyday definition to Latino political life. They crafted questions informed by beliefs they never scrutinized; they drew conclusions their information simply did not justify. Too often they behaved as if, once and for all, the telling questions had been answered. In this sense, they sold their own project short. The LNPS may well be most valuable for helping us all to realize just how much we still must learn. Genuine curiosity is, we mustn't forget, a display of respect.

Even more fittingly perhaps, the tale of the LNPS invites attention to our own work. Those who have brought LatCrit into being, like many other Latinos I know all across the country, really do believe more and better marketed information is central to recognition, understanding, and clout. Our aspirations, however, betray a conspicuous tension. We seem to want knowledge of Latinos to be more expansive, more detailed, more subtle. At the same time, we want this knowledge to be more accessible, more integrated into social policy, more a part of everyday consciousness. Maybe we can have it both ways. But, like the authors of the LNPS, we'll find out only by operating more and more in a world where scholarship hopes to become
news and where news already has become entertainment.

Endless hand-wringing won't change the basic nature of what we face. Like it or not, perceptions we hope to influence now take definition in an environment where obsessive spin often dominates more straightforward forms of persuasion. Nor can we expect ever to be able entirely to control the dynamics. Even grand masters like Bill Clinton - with all his considerable resources, lifelong experience, and more than occasional desperation - can't completely control public opinion. (I agree, we all should do so poorly.) Indeed, getting into the game is itself an achievement. Relative newcomers like the LNPS authors most often can't muster up the resources, can't draw on the hard-earned savvy, and can't depend on the requisite good luck.

Sure we can run and hide. And I understand the impulse. But we'd buy our purity at the price of the very mission we've undertaken. For those who are part of LatCrit and for other academics, the message seems plain. In the new political marketplace, activist scholars are expected to sell themselves and their scholarship aggressively. Meanwhile, the burden of figuring out what is real and what is hype often falls not on some scholarly review committee or board of student editors. It falls instead on consumers. That's us - all of us. Whether or not we're in the business of producing and spreading ideas, we must learn to sort our way through what radio and television stations, newspapers and magazines, lobbying, speechwriting, advertising, and P.R. encourage us to believe. Unstable and uncertain as this may all feel, there's no other way.

That doesn't mean Latinos must stoop to the lowest common denominator. We need be, at once, students, critics, and watchdogs of the modern Information State. We must do our best to change the very patterns we're trying to make ourselves part of in the building and promotion of knowledge about Latinos. And we must watch ourselves as well as everyone else. It's a fine line between setting the record straight and issuing counter-propaganda. (Think only of the LNPS.) And, noble as our intentions may be, we're no less likely than anyone else to surrender to perversions. To make matters worse, we'll sometimes find ourselves duped by some liars and skeptical of some straight shooters. Still, we still must try.

The stakes remain high. Even when Latinos are no longer openly treated as inferior beings, we're still most often regarded as imperfect or incomplete citizens. So many of us are recent immigrants, runs one explanation. So many of us remain politically apathetic, goes still another. And indeed we do have among us many new arrivals and many who don't vote when they should. But the deeper reality should not be camouflaged. So long as we look and think and behave other than Anglo, we'll remain something less than fully equal in the eyes of still sizeable numbers of our fellows Americans. They recoil from the racial, cultural, and political implications of our mere presence, much less our rise to prominence.

[*415] Make no mistake. We Latinos seem to be yearning for a world we've only imagined and never possessed. At least judging by the LNPS, we can be fiercely patriotic and yet critical of the system. We see in our nation's lurid past, just as we see in our nation's romanticized projections, a call to create the future America. Such a vocation is as much obligation as opportunity. We wouldn't want it any other way, though. Little has come easily for us. And we're better equipped than ever before to tackle this gargantuan task. Along with the others in our country comfortable with the melange of people who now call themselves Americans, we'll inevitably remake what it means to be a good citizen. And we'll all be the better for it.

**FOOTNOTE-1:**


n5. See Moran, supra note 1, at 1320, 234, citing Jennifer Cheeseman Day, U.S. Dep't of Com., P25-1104, Population Projections of the United States, by Age, Sex, Race, and Hispanic Origin: 1993 to 2050, in
indicating that Latinos will grow from 9% of the population in 1990 to 21.1% in 2050, becoming the single largest minority group in the United States).


n9. For a systematic treatment of how African Americans view coalitional prospects with other major racial and ethnic groups, particularly in Los Angeles, see Bryan O. Jackson et al., Coalitional Prospects in a Multi-Racial Society: African-American Attitudes Toward Other Minority Groups, 47 Pol. Res. Q. 277 (1994). From the African American perspective, the demographic transformation certainly seems to present economic and existential issues, sometimes cast in stark terms. See, e.g., Susan Anderson, A City Called Heaven: Black Enchantment and Despair in Los Angeles, in The City: Los Angeles and Urban Theory at the End of the Twentieth Century 336, 346 (Allen J. Scott & Edward W. Soja eds., 1996) ("What we commonly knew of the Black community over the last twenty to thirty years was geographically presented, based on a cluster of neighborhoods with a concentrated majority of the city's black population... However, as demonstrated by the impact of diversified population growth, the notion of a geographically determined black community is no longer correct or viable.' In other words, the ghetto no longer exists."). But see John L. Mitchell, Tilting the Balance of Black Bank, L.A. Times, July 3, 1998, at A1 (describing African American-owned Broadway Federal Savings, long a banking mainstay in South Central, reaching out to Latinos and Asians - as customers, employees, and board members - as "part of our community").


n18. Id. at 4-9.

n19. Id. at 1-4.

n20. For an account of the events that gave rise to this change, see Harvey M. Choldin, Statistics and Politics: The "Hispanic Issue" In The 1980 Census, 23 Demography 403 (1986). 


n22. See, e.g., Choldin, supra note 20, at 404-407.

n23. See Latino Voices, supra note 17, at 3.

n24. Id.

n25. Id. at 2-4 (cataloging claims made by everyone from Linda Chavez to Republican and Democratic parties).

n26. Id. at 4-5.

n27. Id.
n28. Id. at 7.

n29. Id. at 7-8.

n30. Id. at 7-8, 219-229.

n31. Id. at 8-9.

n32. Id. at 9.

n33. Id. at 6-7.

n34. Id.

n35. Id. at 6.


n40. Id.

n41. Id. at 695.

n42. For statements drawing on such stereotyping, see, e.g., Linda R. Hayes, N.Y. Times, Oct. 15, 1994, at A18 (Hayes, the Southern California Media Director for Proposition 187, wrote a letter to the editor warning of California's adoption of Spanish as the sole language, the flight of its English-speaking residents, its secession from the United States, its formal annexation by Mexico, and its volatility under Mexican control).

n43. See Latino Voices, supra note 17, at 21-129.

n44. Id. at 1.

n45. Id. at 100-101.

n46. See, e.g., Suro, supra note 36.


n48. See Latino Voices, supra note 17, at 88-89.

n49. Id.

n50. Id.

n51. Id. at 100-102.

n52. For the LNPS authors' views of surveys as research tools, see Barrio Ballots: Latino Politics in the 1990 Elections xiii (Rodolfo O. de la Garza et al. eds., 1994).

n53. See generally Rodriguez, supra note 12.


n56. See Latino Voices, supra note 17, at 210, Question 136 in Appendix 1.


n59. For scrutiny of such representations see, e.g., Jose Antonio Burciaga, Drink Cultura (1993); Alfredo Miranda, Hombres y Machos: Masculinity and Latino Culture (1997); Alfredo Miranda & Evangelina Enriquez, La Chicana: The Mexican

n60. See Jose Armas, Figures Don't Lie; Liars Figure, Albuquerque J., Jan. 24, 1993, at A1.

n61. Id.

n62. See supra notes 45-51 and accompanying text.

n63. See Latino Voices, supra note 17, at 41-43, 10-11, 96-100.

n64. Id. 109-110.

n65. Id. 62-64.

n66. Id. at 71-73, 83-86, 113-120.


n68. See Latino Voices, supra note 17, at 106-107.

n69. Id.

n70. Id. at 111, 213.

n71. Id. at 102-104.


n73. See Latino Voices, supra note 17, at 7-8.

the same journalists, see Roberto Suro, Strangers Among Us: How Latino Immigration is Transforming America (1998).


n88. See Armas, supra note 60 (quoting Chris Garcia of the University of New Mexico).


n91. See Latino Voices, supra note 17, at 16.

n92. See, e.g., Sanchez, supra note 38; Eaton, supra note 57.

n93. See, e.g., Rodriguez, supra note 58.

n94. See Latino Voices, supra note 17, at 16.

n95. Id.

n96. Id. at 13-16.

n97. Id. at 66.


n99. My read of the authors' objectives finds support in some of the authors' own statements. See, e.g., de la Garza, supra note 89.


n101. See Latino Voices, supra note 17, at 15. For evidence that authors themselves do not always subscribe to such dichotomous thinking, see, e.g., de la Garza, supra note 89.


n105. See, e.g., Brimelow, supra note 104 (insisting that the coherent white Anglo Saxon "political nation" is now gravely threatened by today's immigration).

n106. See Kenneth Karst, Belonging to America: Equal Citizenship and the Constitution (1989). For a discussion of how this played out in university education, see Levine, supra note 102, at 20-33.

n107. See Levine, supra note 102, at 109.

n108. For a discussion of Americanization programs, see Bill Ong Hing, To Be An American: Cultural Pluralism and the Rhetoric of Assimilation 18-31 (1997).

n109. See Levine, supra note 102, at 110, citing Lewis Gannett, Is America Anti-Semitic, Nation, Mar. 21, 1923, at 330-331.

n110. For the seminal case for cultural pluralism, see Horace Kallen, Culture and Democracy in the United States: Studies in the Group Psychology of the American Peoples (1924).

n111. For apocalyptic visions of the demise of Anglo-America, see generally Brimelow, supra note 104; Geyer, supra note 104. For a recent assertion of the ideal underlying Americanization programs, note the objections recently raised by Ward Connerly and other University of California Regents to "ethnic graduation ceremonies" held in addition to the larger university-wide UC ceremony. See Kenneth R. Weiss, Mixing Commencement and Culture, L.A. Times, June 20, 1998, at A1 (quoting Regent Sue Johnson's observation that "getting away from where we come from is what America is all about.") For diverse responses, see Letters to the Editor, L.A. Times, June 24, 1998, at B6.

n112. See, e.g., Michelle Mittlestadt, Survey: Hispanics Prefer English, Want Immigration Cut, Record Journal, Dec. 16, 1992, A1; Rutten, supra note 67 ("Latino opinions on questions of immigration, bilingualism and ethnicity are indistinguishable from those of Anglos."). For one impression of "mainstream media" interpretations, see Armas, supra note 60.

n113. See, e.g., Interview of Rodolfo de la Garza by Frank Trejo, Dallas Morning News, Jan. 10, 1993, at J1.

n114. See Latino Voices, supra note 17, at 96-99.

n115. Id.


n118. See Lopez, supra note 54, at 694-702; Karst, supra note 98, at 183-184; Varat, supra note 98, at 572.


n120. In this sense, the authors certainly anticipated exceedingly confident statements by some scholars. See, e.g., Douglas Massey, Latinos, Poverty, and the Underclass: A New Agenda for Research,
n121. Later, in response to other interpretations of the LNPS data, the authors seemed more open about such subtleties. See, e.g., F. Chris Garcia, Angelo Falcon, & Rodolfo de la Garza, Introduction: Ethnicity and Politics: Evidence From the Latino National Political Survey, in Special Issue - Ethnicity and Politics: Evidence From the Latino National Political Survey, 18 J. Behav. Sci. 91-276 (F. Chris Garcia, Angelo Falcon, & Rodolfo de la Garza eds., 1996).


n124. See Latino Voices, supra note 17, at 198.


n126. For others insistent on the purportedly straightforward choice for Mexican Americans between white ethnic and racial minority status, see, e.g., Joseph Tilden Rhea, Race Pride and the American Identity 67-93 (1997).


n129. This admixture of race, culture, and political solidarity marks other races too. See, e.g., Karst, supra note 127, at 311-322. See also Ramon Eduardo Ruiz, Triumph and Tragedy: A History of the Mexican People (1992).


n134. See Latino Voices, supra note 17, at 21-23.


n137. See, e.g., Renato Rosaldo, Assimilation Revisited (Stanford Center for Chicano Studies Working Papers Series No. 9, 1985).

n138. For examples of literature examining aspects of Latino social mobility, see Tienda supra note 90; In The Barrios, supra note 90. For the contrast between those experts who regard Latino social mobility as indistinguishable from other "white ethnics" and those who, stressing past and present racial discrimination, describe a "blocked assimilation" in second- and third-generation Latinos, see Moran, supra note 1, at 1325-1326. For identification of distinct forms of assimilation, see Alejandro Portes & Min Zhou, Should immigrants assimilate?, 116 Public Interest 18 (1994).

n139. See Rosaldo, supra note 137, at 1.
n140. See supra notes 79 & 80 and accompanying text.

n141. For a recent invocation of the conventional model see, e.g., Gregory Rodriguez, The Emerging Latino Middle Class (Pepperdine University Institute for Public Policy and AT&T, 1996).

n142. These sketches draw from, among others, the following sources: Juan M. Garcia Passalacqua, The 1993 Plebiscite in Puerto Rico: The Story, The Results, and Their Implications (1993); James Jennings, Puerto Ricans in New York City (1977); David Montejano, Anglos and Mexicans in the Making of Texas, 1836-1986 (1987); Padilla, supra note 100; Alejandro Portes & Ruben G. Rumbaut, Immigrant America: A Portrait (1996); Portes & Stepick, supra note 14; Rodriguez, supra note 14; Sanchez, supra note 15; Virginia E. Sanchez-Korrol, From Colonia to Community: The History of Puerto Ricans in New York City, 1917-1948 (1983); Kevin A. Hill & Dario Moreno, Second-Generation Cubans, 18 J. Behav. Sci. 175 (1996); Lopez, supra note 54; Alejandro Portes, Morning In Miami: A New Era for Cuban-American Politics, Am. Prospect 28 (May 1998).


n145. See generally Bender, supra note 143.

n146. See, e.g., Margaret E. Montoya, Law and Language(s): Image, Integration and Innovation, 7 La Raza L.J. 147 (1994).


n150. Id. See also Rodolfo Stavenhagen, The Ethnic Question: Conflicts, Development, and Human Rights (1990); Ronald Wardhaugh, Languages in Competition (1987).

n151. See Valdes, supra note 149, at 4-6.

n152. See Latino Voices, supra note 17, at 8.

n153. See, e.g., supra note 60 and accompanying text.

n154. For these and other such fascinating details, see Martin Albert & Loraine K. Obler, The Bilingual Brain (1978); Jyotsna Vaid, Language Processing in Bilinguals: Psycholinguistic and Neuropsychological Perspectives (1986).

n155. See Latino Voices, supra note 17, at 96-100.

n156. See Valdes, supra note 149, at 34.

n158. For some conditions of such a world, see Moran, supra note 1, at 1342-43.


n160. See Latino Voices, supra note 17, 79-81.

n161. For a sample of views, see Dalton, supra note 7; Kennedy, supra note 87; Cornell West, Race Matters (1993); Patricia J. Williams, Seeing a Color-Blind Future: The Paradox of Race (1997); Regina Austin, The Black Community, Its Lawbreakers, and a Politics of Identification, 65 S. Cal. L. Rev. 1769 (1992).


n164. See generally Lopez, supra note 116.


n166. See e.g., Special Issue - Ethnicity and Politics: Evidence From the Latino National Political Survey, supra note 121.
ESSAY: RELIGION AND SPIRITUALITY IN OUTSIDER THEORY:

TOWARD A LATCRIT CONVERSATION:

INTRODUCTION: RELIGIOUS RITUALS AND LATCRIT THEORIZING

Margaret E. Montoya

BIO:

* Associate Professor, University of New Mexico Shool of Law. My thanks to Nancy Ota, Leslie Espinoza, David Cruz, and the other participants in the impromptu discussion on religion at the St. Mary's LatCrit conference.

SUMMARY: ... After the first annual LatCrit conference held at La Jolla, California, Professor Keith Aoki observed that "issues of religion and spirituality are submerged not far below the surface of emerging Latina/o Critical Theory." ... I mention these references to Professor Aoki and Valdes and to my own scholarship by way of providing context and continuity to this Introduction to the cluster of articles on LatCrit theorizing about religion and spirituality. ... In my opinion, the St. Mary's faculty conflated the challenge to generic religious space, as exemplified by the space we were in, with other challenges to Dean Aldave and her supporters. ... Religious ritual is one such group of identity-forming cultural practices. ... This cluster of articles on LatCrit theorizing and religion begins with Professor Verna Sanchez's hortatory essay called Looking Upward and Inward: Religion and Critical Theory. ... With her comments at the conference and again in this symposium, Professor Ota picks up the challenge from Professors Aoki and Valdes and cautions us against the "blithe incorporation of Catholic tradition in a LatCrit conference" and focuses on the crucial questions to be considered in a nascent critical movement such as LatCrit, questions about history, identity, meaning, and bridges/barriers. ...

[417]

After the first annual LatCrit conference held at La Jolla, California, Professor Keith Aoki observed that "issues of religion and spirituality are submerged not far below the surface of emerging Latina/o Critical Theory." n1 He proposed that LatCrits begin to "unbracket" religious affiliation and identity in the construction and representation of individual and group racial identities. n2 Professor Aoki further posited that "in a Pdoxical way, religion simultaneously may be both more and less difficult to voluntarily discard than race, language or nationality as a constitutive element of one's individual and group identity." n3

Professor Francisco Valdes, in commenting on Professor Aoki's intervention at the first LatCrit conference, opined that "[Latina/o social or legal interests in religion or spirituality] include the relationship of Latina/o religious identities and practices to the politics of subordination and self-empowerment in the United States." n4 From its very inception, LatCrit Theory recognized the salience of spirituality and religion to its anti-subordination analyses. Professor Valdes articulated the opportunity and the imperative for LatCrits in this way:

The pending question for LatCrit theorizing, then, is whether "religion" and/or spirituality provide sources of Latina/o resistance to subordination or whether they serve as sources of Latina/o accommodation of disempowerment. In varied instances or contexts, the answer could be either or both. The task, then, is not a LatCrit assessment of the "correctness" or value attributed to any particular article of faith or dogma, but a searching analysis of religion's impact on Latina/o lives to help fulfill the LatCrit goal of advancing Latina/o liberation from social or legal oppression. The [*418] lesson therefore, is that LatCrit projects focused primarily on race, ethnicity, class, gender or sexuality, should manifest a broadly-defined anti-subordination sensibility and purpose. n5

Details of spirituality and Hispana/o Catholicism n6 have dotted my scholarship beginning with my first article in which I commented on the head-to-toe masks of the nuns who were my elementary school teachers n7 and continuing with my presentation on LatCrit praxis at the first LatCrit conference. There I invoked memories of elementary school and our ritualistic inscription of "J.M.J." ("Jesus, Mary, and Joseph") on our written work which I linked to Chicano/a graffiti practices. n8

I mention these references to Professor Aoki and Valdes and to my own scholarship by way of providing
context and continuity to this Introduction to the cluster of articles on LatCrit theorizing about religion and spirituality. These articles are likely to add to the controversy generated by the conversation about religion and Catholicism that took place at the St. Mary’s LatCrit conference. By way of positioning myself within this dialogue, I will add that I am, once more, a "practicing" Catholic, mostly but not entirely, because of my daughters’ entreaties. n9 I endured, but I know I was also benefited academically by, nine years of Catholic school education. I consider my Catholicism as indoctrination, or a subtly coercive cognitive "binding" to certain beliefs, a notion consistent with an accepted etymological meaning of "religion." n10 I have heard some people comment that they are "Catholics in recovery" and I understand this to mean that they are trying to rid themselves of the cognitive map that develops from religious indoctrination. For part of my life, I was a "non-practicing" Catholic: I attended church irregularly and rarely took the sacraments. I understand this to be different than a "lapsed" Catholic who has decided to stop being a Catholic with no intention of returning to the church. I have never [^419] stopped thinking of myself as a believing Catholic and acknowledge that religious dogma is an important perceptual frame for me. I often find solace in the familiarity of Catholic locations, rituals and icons, especially Nuestra Señora de Guadalupe. n11 However, as a feminist and a LatCrit engaged in anti-subordination projects, I have profound and irreconcilable differences with Catholic dogma, at least as enunciated by the Pope, particularly with respect to issues of sexual orientation and contraception. I deal with this, as I suppose many other Catholics, other Christians and perhaps all progressives who espouse some religious dogma, n12 by compartmentalizing my religious beliefs from my critical theorizing. Recently, partly as a result of writing this Introduction, I have begun to examine whether an integration of the two is possible or desirable. n13

Three of the articles in this cluster on LatCrit Theory and religion and spirituality, those by Professors Ota, Valencia, and Hartigan, focus on the discussion prompted by Professor Ota’s comments at the conference. I will generalize her comments to be about the effects of religious iconography and ritual on the discursive and theoretical purposes of the conference. The Ota-Valencia-Hartigan colloquy, as well as the articles by Professors Sanchez and Castro, raise important questions for future LatCrit theorizing about the places and spaces in which we do our work as well as about the complexity of identity-forming cultural practices, including religious rituals, and their unintended effects on those who don't share particular cultural orientations.

Place, Space and LatCrits

Place and space and their effects on interactions are often issues for conference organizers. Much thought goes into choosing suitable surroundings and appropriate arrangements. The seating in most meeting spaces is usually arranged in neat rows and symmetrically rectangular patterns where the audience sits looking forward and eye contact with anyone other than the speaker is almost impossible. I remember the women participants at the first LatCrit conference re-configuring the chairs in the main meeting room into more of a semi-circular seating pattern. At the second LatCrit conference we seated ourselves in the round (the traditional seating pattern for feminist classes and meetings) for the second day of discussions.

The spacial and design features of the meeting location can subtly structure the interactions. For example, my colleague Christine Zuni-Cruz organized a clinical teaching conference two years ago and held the meetings at the Isleta Indian Pueblo. The senior citizens’ center prepared native foods for the participants and pueblo-based writers were included in the skill-building session on story-telling. Other meetings were held at the Pueblo Indian Cultural Center. The places and spaces of the conference with their cultural resonances were intended to leak into the perceptions of the participants. Culture, especially native cultures, was the one of the organizing principles of the conference, and space was utilized to further the organizers’ objectives.

In a similar manner the overtly religious spaces of St. Mary’s as well as the inclusion of prayers and the gifts of religious mementos for invited guests affected the perceptions of the participants at the second LatCrit conference. The effects were varied. Some of us could easily (often mindlessly and uncritically) bow our heads in prayer, but others understandably refrained from being compelled into silence for religious rituals with which they did not identify, rituals which, after all, are embedded with contested meanings about patriarchy, power and privilege, all core issues for LatCrits.

The religiously expressive space of St. Mary’s furthered the objectives of the conference organizers when Professor Ota broke her silence about its oppressiveness; this linkage of space and LatCrit objectives, however, was inadvertent and occurred at considerable personal risk to Nancy Ota. Given that LatCrit theorizing is about anti-subordination, the
spaces in which we conduct our work should facilitate our interrogation of relations, examination of institutions, excavation of histories, exposition of contradictions, flaunting of convention, and dissection of hegemony to understand the intricacies of power with its continual reproduction and re-consolidation.

The linkage between the religious spaces of St. Mary's and the LatCrit anti-subordination project was inadvertent partly because of the mixed motives of the conference's planning committee. The St. Mary's members of the committee had a celebratory attitude towards their interpretation of the spaces in which they conduct their academic work. From their perspective, religious spaces enhance their academic work; for them, there is more synergy between the Catholic icons and rituals and legal education than there is dis-empowering contradiction.

The undercurrents of the meeting were the rumors that the St. Mary's administration and faculty were in a heated battle over falling bar passage rates and other issues. Consequently, for the St. Mary's participants, the LatCrit meeting was seen as an opportunity to publicize the law school's (and Dean Barbara Aldave's) notable achievements in the racial diversification of the student body and the faculty, the establishment of a highly successful clinical program, and outreach to the Latina/o communities.

Because there were conflicting concerns and objectives, the interventions by different participants had many sub-currents and subtexts, and we often talked past one another. As it happened, the internal political battles of St. Mary's as the sponsoring school were largely unknown to many of the participants. Thus, the accolades that were offered to Dean Aldave's leadership were misunderstood by many. In retrospect these attempts by St. Mary's faculty to support Dean Aldave and her programs would have been more effective had the planning been more, open, inclusive and strategic.

Nancy Ota's attempt to be heard about the way that religious space can deform and conform sexual identity was silenced repeatedly. The specific space we were in was being defended by the St. Mary's faculty because they were already embattled over its control. That space, therefore, had different valances for the St. Mary's faculty. For others of us, the space was more generic - as religious space it invited challenge and analysis. In my opinion, the St. Mary's faculty conflated the challenge to generic religious space, as exemplified by the space we were in, with other challenges to Dean Aldave and her supporters. Their spirited defense of the space and its meanings was misplaced and displaced. This concerted defense re-
silenced Professor Ota and others who were focused on more generalized issues of ritualized space and place.

The lesson to be drawn from this dissension is that future conference planners must carefully sort out and try to anticipate the meanings of the places and spaces in which we do our LatCrit work. Moreover, the objectives of the sponsoring schools must be explicit and consistent with the expectations of the wider planning committee and the conference participants.

Identity-Forming Cultural Practices and LatCris

The importance of space and place is not only to the multiple ways in which they structure interactions but also because place and space are constitutive of individual and group identities. Latinas/os identify as islanders, mainlanders, desert peoples and mountain folks. The stories we tell are informed by the places we inhabit. Similarly, various cultural practices are also constitutive of our identities. Religious ritual is one such group of identity-forming cultural practices. Language is another.

Cultural practices, however, can bind peoples together, but they can also erect barriers. For example, I make a point of beginning every presentation before every audience in Spanish, whether I am addressing an AALS (American Association of Law Schools) workshop or an elementary school class. Because the history of the Southwest and that of my own family is replete with instances of language prohibition, the reclamation of Spanish as an intellectual and academic language is one of my professional goals. I also see using Spanish in public places as an everyday transgression against white supremacy and its corrosive sociolegal caricatures. Nonetheless, I know that my injecting Spanish into my talks creates a barrier for those who don't speak it, among Latinas/os and others. And I struggle with this. n15

There is no denying that Catholicism with its prayers, icons, dogma, and hierarchy, and has been, constitutive of Latina/o identities. How, then, are we to understand the inclusion of religious rituals in LatCrit meetings? Is it included to be a subject of our theorizing and interrogation? Let's say that the "Grace" before meals invokes a male god, can I as a LatCrit feminist object or even note the patriarchal subtext? At St. Mary's, should any of us (Catholic or not) have interrogated the ambiguous/ambivalent qualities of Nuestra Señora/La Virgen de Guadalupe whose image as rendered by a local artist was given to conference guests? And, as LatCrit feminists, can we even wrap our minds around "Virgen mothers" (and was that a wrap or a warp)? My answer is an emphatic
yes. I fear, however, that such interrogations can only be successful if we agree ahead of time about the terms of engagement. What I mean by this is that such interrogations did occur at St. Mary's (most notably, by Professor Ota) but were interpreted by some as off limits and/or disrespectful of "our" culture, defined and experienced, at times, as the Catholic subculture and, at others, as Latina/o subculture. While these two overlap, they are not co-extensive.

[423] The lesson I draw from our St. Mary's experiences, individual and collective, is that cultural practices - whether based on our linguistic variety, our religious rituals or other elements of our identities - should continue to enhance and complicate our LatCrit meetings. With the shared understanding that we welcome the questions, doubts, challenges, and possible discomfort that they evoke.

This cluster of articles on LatCrit theorizing and religion begins with Professor Verna Sanchez's hortatory essay called Looking Upward and Inward: Religion and Critical Theory. n16 Her article manifests the cultural syncretism that is characteristic of Latina/o spirituality, the weaving together of disparate elements to produce a new entity. For many of us, our indigenous roots and histories are kept alive partly through our religious and spiritual practices. Professor Sanchez provides an example of this as she moves us out of a Judeo-Christian context by beginning with Santeria, thereby centering "minority" religions within this dialogue. n17 Noting both the absence of analyses of religion in major Race Crit texts n18 and the historical linkages between churches and religious leaders and inter/national justice movements, n19 Professor Sanchez exhorts us to expand our analytical frames to include religion in our theorizing.

Professor Nancy Ota begins her article Falling From Grace: A Meditation on LatCrit II n20 by noting (in the most positive terms n21) that the discussion on religion and Catholicism not only displaced the conference's consideration of Asian-American legal scholarship but also, once more, muted the "queer" voice. With her comments at the conference and again in this symposium, Professor Ota picks up the challenge from Professors Aoki and Valdes n22 and cautions us against the "blithe incorporation of Catholic tradition in a LatCrit conference" n23 and focuses on the crucial questions to be considered in a nascent critical movement such as LatCrit, questions about history, identity, meaning, and bridges/barriers. In calling to mind the complicity of the Catholic Church in the structures and forces of conquest and colonization, Professor Ota links this history to Latinas/os and to gays, lesbians, bisexuals, and transgendered persons among Latinas/os.

[424] Professor Ota repeatedly reminds us of the religious and spiritual diversity that typifies both Latina/o and Asian communities. In several places, her analysis juxtaposes the liberatory justice-seeking traditions of the various religions with their subordinating freedom-denying histories. She provides us with a model of effective LatCrit theorizing by searching out the positive aspects of cultural practices while exposing their subordinating effects.

Faced with Professor Ota's careful critique, we (heterosexuals), as a critical practice, should examine, expose, and acknowledge our complicity in shrouding and rendering acceptable the discrimination and subjugation of Queers with our continual refusal to hear the stories and the voices, in and out of the Latina/o community. We must also be careful not to appropriate Queer space and Queer suffering. Thus, while I agree with Professor Ota that the implosion at the St. Mary's conference about religion was almost inevitable, as it percolated beneath the surface; nonetheless, we should have made time and space, later in the program, to listen to and learn about Asian American and/or Queer concerns.

I must admit to how difficult writing this Introduction has been for me. I am late in getting the Introduction to the law review editors and I do so with apologies. Partly it's because I use evasion to deal with unpleasant tasks and I have put off the very unpleasant task of disagreeing publicly with Professors Valencia and Hartigan. Writing this Introduction has been a religious and an intellectual exercise for me. I have prayed, read, and meditated on what to write and how to write it. I will have failed if my words sound harsh or ill-considered. I have decided to be direct about my interpretation of their work because I consider the LatCrit anti-subordination projects so vitally important. We must learn to talk frankly about difficult topics. I can't agree more with Professor Valencia when he asks us to continue the dialogue.

Professor Reynaldo Valencia provides both personal narrative and historicized analysis in his piece entitled, On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II. n24 Professor Valencia deploys a closet metaphor with the word "Out," appropriated from the Queer experience and referring to "coming out or being out of the closet." This allusion fails, from my perspective as a heterosexual Latina Catholic, to elucidate either the difficult choices available to persons of Faith who desire to integrate religious beliefs into their public lives or to illuminate the shared experiences of subordination between Queers and Catholics. Queers continue to suffer de jure discrimination in employment, education, housing, medical care, etc., and to be the victims of
untold (and untolled) hate crimes of violence. We Catholics, like white men, may be the butt of late night jokes and even the occasional objects of derision; nonetheless, Judeo-Catholic-Christian beliefs and rituals are at the core of traditional Euro-American ideology, receiving constitutional protection and socio-economic accommodation.

Professor Valencia's narratives are valuable because they provide the kind of details that bear excavating as LatCrits analyze how cultural practices, such as religious rituals and imagery, are the building blocks of our individual and collective identities. But he doesn't do the hard work of showing how Latina/o Catholicism inter-penetrates different forms of il/legitimate power - through land holdings, by structuring family relations, by sanctioning nationalism and colonialism, etc., etc. Moreover, finding idiosyncratic instances where Catholic individuals or schools have acted to support Queers, as described in Professor Valencia's epilogue, obfuscates the manner in which the Church exercises its considerable institutional and structural power to thwart the extension of human rights protections to Queers.

Professor Valencia asserts at several points that "the religious personal is ... the equivalent of the secular political." n25 However, his examples don't interrogate the boundaries of the binary categories so that we can understand whether or how they are interlocking. I yearn to hear how Judge Garza reconciled Biblical references with constitutional interpretation. n26 From where I stand, Judge Garza's biographer seems to be reiterating the usual compartmentalization that characterizes the religious beliefs of public persons - namely, we pray for justice but follow the dictates of the law. n27 And, the LatCrit lesson is that, if we do so without an in depth analysis of the contradictory forces of the law, we risk re/producing subordination.

In her article Disturbing the Peace, n28 Professor Emily Fowler Hartigan frequently uses categories of analysis that confound the reader, at least this one. For example, in attempting to sort out "what hurt most" n29 about the discussion on religion at the St. Mary's conference, she identifies the "non-Catholics" n30 with the "judg[ment of] the Church and "us" as uncritical of that Church." n31 I conclude that Professor Hartigan is using "us" to mean Catholics (and not St. Mary's Catholics), but the criticism or critique of the Church, as I recall, came as much from "believing" Catholics like myself as from "lapsed" Catholics and "non-Catholics." But, later in the article, I again get caught in Professor Hartigan's categories. For example, she writes "[a] number of speakers rushed into judgment, lacking ... critical distance ... or ... respect." n32 According to Professor Hartigan, these speakers, again identified as "non-Catholic," n33 commit a variety of errors: ignoring the Church's affirmations of basic economic rights, recapitulating anti-Catholicism, preaching pluralism but failing to practice it. This analysis is just wrong: the speakers included Catholics, myself included, who know Church doctrine and history. More importantly, as LatCrits we did not go to St. Mary's for a weekend of religious indoctrination nor silent celebration; we were there to do serious critical work. Consequently, as I have already asserted, any cultural practices, including religious rituals, are open to critical challenge from LatCrits, whether Catholic or not.

Professor Hartigan evinces broad knowledge of Catholicism drawing on pertinent experiences as a Catholic progressive. However, her excoriation of the participants at the LatCrit meeting is unjustified and not in keeping with LatCrit objectives as articulated by Professors Aoki and Valdes with which I, for one, agree. She accuses us (again her categories are problematic because I simply don't know if "they," the supposed transgressors, are LatCrits or non-Catholics) of positioning ourselves as "anthropologists" and posits that our stories "trespassed." Many of us within the LatCrit movement have deliberately chosen to use cross-disciplinary methods, including borrowing ethnographic methods from anthropology. n34 Is Professor Hartigan taking issue with the crossing of disciplinary boundaries and if so, why? Also which stories "trespassed" whose space, mine about abortion, the one about attempted suicide, the family reunion story?

In this same vein of trespassing, Professor Hartigan adds:

"We ... invited them into our home, and they acted in a way too similar to the wretchedly eloquent stories of how other religions and cultures (especially Native American, Aztec, Mayan) had been savaged by my Church. n35 Is Professor Hartigan comparing the criticisms of LatCrits or non-Catholics to the savage violence of the Catholic Church's colonialism? Then again, I can't make any sense of this idea about an [*427] invitation: while the host school makes conference arrangements, we must remember that this was a LatCrit meeting for LatCrits. Wasn't it?

Professor Hartigan, albeit from a very different perspective, would agree with Professor Max Castro who asserts that the contemporary "Catholic Church ... defends and upholds certain human values more effectively than almost any institution on the planet."
Professor Castro adds an important perspective to this cluster of articles on LatCrit and Religion. Using the Pope's recent visit to Cuba as the context for his article The Missing Center? Cuba's Catholic Church, Professor Castro provides a historical and political analysis of the Catholic Church's role in Cuba. His reference to the "missing center" can be understood from two vantage points: one refers to the period from 1961 to 1969 when the Church was actively suppressed by Fidel Castro's communist regime. The second and intended reference is to the Cuban Catholic Church as a quasi-political party, "a party of the center, of moderation and dialogue." Professor Castro, emphasizing the drastic change in Church rhetoric after Vatican II when the Church began to proclaim social justice commitments throughout Latin America, speculates that the Church can perhaps "offer itself as a bridge and a space for the necessary dialogue."

This is a good place to stop in this analysis of religion and spirituality. The following represent only some of the many vital areas for future LatCrit analyses regarding religion and spirituality:

1. Do the class and lifestyle accommodations and cultural assimilation that often accompany the pursuit of higher education, elite professions and academic theorizing promote or assume secular, agnostic and/or anti-religious stances? If so, does this have special consequences for Latinos/as who often come from families and communities with strong religious beliefs?

2. How can LatCrits use their varying commitments to dogma, faith, and spirituality to understand, analyze and interpret both the everyday joys and tribulations of the dispossessed and impoverished throughout Latin America, including Latina/o enclaves in the U.S.? Can we create a language of analysis that incorporates spirituality and a critical religiosity to increase our understanding of Latina/o communities and our links to other marginalized groups?

3. How do (or can) religious practices and beliefs, both historic and contemporary, inter-penetrate with other characteristics, such as race, color, language, gender and sexual orientation to create meaningful and liberatory referents and markers of collective identities?

4. What role do religious institutions play in the transnational movements of people, capital, resources, and information? How does the Christian proselytizing going on in Latin America link to other impositions and exportations of Euro-American culture? Does such religious outreach enhance the "regional integration and cooperation" that is the basis for such political initiatives as NAFTA?

5. Recently the political landscapes of Mexico, Bolivia, Paraguay, Ecuador, Guatemala, Peru, and Nicaragua have been challenged and are being changed through the organizing of indigenous peoples. Some religious groups, particularly Catholic ones and most notably Bishop Samuel Ruiz of Chiapas, continue to play a significant role in the on-going transformation of mestizo nation-states into multi-ethnic democracies. Throughout Latin America the complex and multi-layered relationships between mestizos/as and indigenous peoples are beginning to be examined.

What lessons can LatCrits learn from this evolving situation? How are analyses of and responses to color-on-color subordination, e.g., the suppression and marginalization of indigenous peoples by mestizos/mulattos, different from and/or similar to those referring to white-on-color subordination? Do categories of "indigenous" as distinct from "mestizos/mulattos" or "Latinos" or "ladinos" have theoretical integrity? Can LatCrits facilitate coalitions with indigenous peoples in and out of the U.S. (or how does Samuel Ruiz mediate on behalf of the Zapatistas) without compromising their objectives of self-determination and self-expression? [429] Does the hard work of a Bishop Ruiz building schools and health clinics to address the material needs of oppressed communities suggest a LatCrit approach? Don't sociolegal explorations of identity clarify individual and group claims within democratic systems in order to attenuate the interlocking forces of white supremacy, globalized state power and corporate capitalism?

We are confident that these difficult discussions about religion and spirituality have opened up a space for further conversations and that these articles serve as a bridge for others to walk into this continuing dialogue.

FOOTNOTE-1:


n2. Id. at 247-49.

n3. Id. at 253.


n5. Id. at 22.
I use this term to denote the hybrid practices of New Mexico Catholicism which combine elements of Hispano and native, particularly pueblo, cultures with traditional Roman Catholicism. Similar forms of hybridity can be found in most parts of America Latina.


Margaret E. Montoya, Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis, 2 Harv. Latino L. Rev. 349 (1997).

A few years ago my older daughter Diana asked to be baptized and she, her sister Alexandra, and I began the educational process, which accompanies receipt of the sacraments of Baptism, Confirmation and First Communion. My husband is an agnostic and does not participate in religious rituals.

The etymology of the word "religion" is contested but an accepted root word is the Latin "religare" meaning "to bind" as through monastic vows. See The Compact Edition of the Oxford English Dictionary 410 (1971).

Here I agree with Professor Aoki that religion and ritual raise questions of "voluntariness, intentionalism, and determinism." See Aoki, supra note 1 at 252-53.

I frankly don't know enough about non-Judeo-Christian religions and belief systems to know whether they, too, are patriarchal and complicit with nationalism, colonization, state domination and hegemony.

On April 26, 1998, I was invited to lead a Faculty Forum at my University's Catholic chapel. I entitled my presentation "Can Catholic Intellectuals Integrate Religion into Public Life?" and examined the possibility of bringing religious beliefs to bear on teaching and scholarship within a public institution. My tentative conclusion is that our religious beliefs may at times require us to position ourselves with respect to certain topics. By positioning I mean deciding whether to disclose how our life experiences, including our religious beliefs, inform our academic work.

Dean Barbara Aldave's energetic leadership proved controversial both among the faculty and the wider legal community. President Father John Moder decided not to renew Dean Aldave's three year contract as dean, offering her instead a one-year contract. This set off a reaction from many sectors in legal education that strongly supported Dean Aldave and the work she had been doing internationalizing the curriculum and diversifying the faculty and student body. Dean Aldave has explained that these objectives were integral to St. Mary's mission as a Catholic law school. See Barbara Bader Aldave, The Reality of a Catholic School, 78 Marq. L. Rev. 291 (1995).

See Montoya, supra note 8, at 351.


Ota, supra note 20, at 439.


n31. Id. (Quotes added.)
n32. Id. at 485.
n33. Id.

n34. See Melissa Harrison & Margaret E. Montoya, Voices/Voces from the Borderlands: A Coloquy on Re/Constructed Identities in Re/Constructed Legal Spaces, 6 Colum. J. Gender & L. 387 (1996).

n35. Id. at 488 (emphasis added).


n37. Id. at 499.

n38. Id.


n40. Id.
La vida es duda,
y la fe sin la duda es solo muerte. n1

Several years ago, I somehow "fell into" writing about religion and the First Amendment. I was intrigued, for several reasons, by a case then in a Florida district court. n2 The case was unusual in a number of respects. It was perhaps the first time in this country that a babalawo (very loosely translated, a priest) in the Santeria religion was attempting to set up a formal place of worship and ritual, which would include the sacrifice of animals. What was also unusual was that the babalawo, Ernesto Pichardo, had gone public with his intentions to establish such a place. Santeria, for various historical reasons, has long been "underground." Many people are aware of it, but it has not, until recently, intentionally gone public. As a Latina growing up in New York City, I was familiar with Santeria. Botanicas n3 were all over my neighborhood, and even people who were not formally initiated into Santeria would often have Santeria-related objects in their homes or engage in some practice that derived from that belief system. Having some familiarity with the religion, and knowing its general reputation for being, minimally, very private, I was surprised and amazed by Pichardo's stated intentions. I wondered about his motives and worried about the possible repercussions for him, his plans, and for practitioners around the country. There were many reasons to fear that Pichardo's attempt to bring Santeria public would stir up profound feelings and antipathy n4 and indeed, that was exactly what happened in Hialeah and elsewhere. n5

After seeing Pichardo on a Spanish television news show, I became convinced that he was a man of good intentions and was trying to dispel many of the negative stereotypes that had developed about Santeria. It was against this backdrop that I was drawn into writing about religion, but only as it specifically related to what have typically been designated "minority" religions. This is an interesting term that usually has two meanings. The first is meant to refer to religions that are, at least in the United States, numerical minorities in terms of adherents. The second, though, refers to those religious beliefs/practices that are followed by "minority" persons. It was really this last meaning that intrigued me the most.

If race and ethnicity have, in deed, been the hidden or not so hidden influences on the development of the law in this country, then that should also be reflected in the jurisprudence of the free exercise clause of the First Amendment. I was curious to see to what extent, if any, a dominant cultural perspective would manifest itself in the jurisprudence. As I, and others before me discovered, there was indeed a discernible monotheistic, Judeo-Christian ideological bent that resulted in less protection being afforded to "minority" religions. n6 But lately, what has intrigued me even more is the fact that religion, generally, appears to be...
the only off-limit topic for discussion among many critical theorists. I am speaking of the virtual absence of any focused, critical examination of the role of religion in "the treacherous terrain of American racial politics." n7 This omission cannot possibly be because religion is seen as either irrelevant to our lives or not worthy of discussion. I cannot, then, understand why religion has remained a virtually unexamined factor in the realm of critical theory.

I have no interest in making a claim that for people of color, religion is a more important force in our lives than for others. I do know, however, that religion has been a strong influence in many of our cultures and communities. Religion has also, historically, and through the present day, been a tool or mechanism for enhancing and destroying or reshaping cultures, and playing on or into racism, sexism and homophobia. It has been a means for confining and limiting the roles of many segments of society, especially, but not exclusively, women. Regina Schwartz has noted how monotheism has been grounded in violence: "Violence is the very construction of the Other." n8 Christianity has also served as a frequently explicit, and more often implicit, influence on courts throughout this country over the last two hundred years. n9 Thus, it has always puzzled me that of the many outstanding and creative writers producing provocative, innovative, and challenging analyses in the general area of critical legal theory, n10 few have explored the role of religion.

Critical legal theory was born of a rejection of the classic liberal belief that American law relies on a "rational, apolitical and neutral discourse with which to mediate the exercise of social power." n11 Religion and its influence on the law would seem to be natural area of inquiry for such theorists. I do not mean to suggest that there are no articles out there exploring, from a critical theorist's perspective, the ideology and history of the interaction between religion and law and the effect of that on the lives of disenfranchised people. There are, but why are there not more? Scanning the Table of Contents of two important, fairly recent books on Critical Race Theory, for example, there are no articles that specifically explore, examine, or analyze the question of how religion intersects with questions of race. n12 I do not think it is because religion is irrelevant to questions of racism. Indeed, I think quite the opposite is true. In this country, religion, specifically Christianity has exerted tremendous influence in this area, both in perpetuating racism and in fighting against it. In the introduction to Critical Race Theory: The Key Writings, for example, the editors explain that two common points emerged from the writings collected there. The first point is "to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America...." n13 The second, is the "desire not merely to understand the vexed bond between law and racial power but to change it." n14 I have difficulty understanding how it is that those points do not include a greater degree of scrutiny about the role of religion in all of that and why these writings have yet to appear in print. If critical race theory includes the insights that racism is normal and an "ingrained feature of our landscape" n15 and that "culture constructs social reality that promotes its own self-interest..." n16 then it would seem that religion should be seen as part of that discussion.

Religions (most specifically, those based in or derived from Judeo-Christian origins, which includes Islam) have often been used to both help and hurt people of color in this country and elsewhere. One does not have to look further than the Civil Rights Movement in this country, for example, to establish how much of the impetus for progressive social change came from various churches and religious leaders. In Central and South America, the social justice movement has often derived from Christian ideals and has been closely linked with priests, nuns and laity of the Catholic Church. Conversely, the Dutch Reform Church was an ardent and leading proponent of Apartheid in South Africa, and, for a long time, many Catholic and Protestant churches in this country practiced de facto segregationist policies. I do not think that we have looked far enough past the role of religion and churches to examine how it can be that churches and religions have often operated, implicitly or explicitly, against the social good of people of color and the poor.

Several years ago, I took a graduate class in Latin American politics, where we discussed the various movements for social change and revolution that had permeated Latin America, particularly during the 1960s and 1970s. That led to a discussion of liberation theology, which had taken hold all over the region. The question I had about liberation theology, which was never answered to my satisfaction, is how one could reconcile all of the principles and ideals of that ideological movement while remaining and operating within the confines of Catholicism and the Catholic Church. I believe as do others, that such a theology is antithetical to the Catholic Church and Catholic theology. n17 For example, Gonzalo Arroyo, who had been an exiled Chilian Jesuit, had written on what he considered to be the impossibility of the Church as an agent of social reform. n18 Yet, there have been many brave and courageous people who have put themselves at risk in order to struggle for social justice, motivated by what they have identified as beliefs based on Christ's teachings. For me, as a
woman of color, feminist and mother to a daughter, I can not look past the subordination of women inherent in Judeo-Christian religions. Yet, I recognize both that that is a personal and political choice I have made, and that others have in fact found ways to reconcile what, to me, are seemingly contradictory positions and ideologies. What troubles me has been the absence, until now, of any real public dialogue or discussion, either at conferences or in the literature of critical race/gender/sexuality theory about these ideas. I do not raise this point to offend, or to challenge others to defend their beliefs. Instead, I raise it as an example of what I am trying to urge in this essay.

I think there are many viable and important perspectives and discussions that should be taking place under the large umbrella of critical theory. I suggest that exploration of the significance and interplay of religion vis-a-vis race, gender, and sexuality and the development of the law is critical. I think it is a vital and necessary component of our ongoing intellectual contributions to legal scholarship as well as to our communities and ourselves. I welcome then, the door that this symposium seeks to open, and am thankful for the opportunity to raise these concerns. I look forward to a full and rich dialogue about all of these issues.

FOOTNOTE-1:

n1. "Life is doubt, and faith without doubt is only death." Howard T. Young, The Victorious Expression: A Study of Four Contemporary Spanish Poets - Miguel de Unamuno, Antonio Machado, Juan Ramon Jimenez, Federico Garcia Lorca 20 (1964) (citing a poem by Miguel de Unamuno).


n3. A botanica is a store which sells various herbs, liquids, etc., that are often used in Santeria rituals.

n4. See 508 U.S. at 541-42, (noting specific comments made by City Council members and others in reaction to Pichardo's announcement.)


n7. Kimberle Crenshaw et al., Critical Race Theory: The Key Writings That Formed the Movement xxxii (1995)


n10. I am using this term to incorporate, by reference, all of the more specified areas within that umbrella - race, gender and sexuality.

n11. Crenshaw et al., supra note 7, at xviii.

n12. For example, in Critical Race Theory: The Cutting Edge, there are a total of fifty pieces, by various scholars, on topics ranging from "Criticism and Self-Analysis" and "Critical Understanding of the Social Science Underpinnings of Race and Racism" to "Race, Sex, Class, and Their Intersections." None of these pieces, however, specifically consider the ideology and history of religion, its influence and impact on the rule of law or any relationship it may have to perpetuating or opposing sexism, racism or homophobia, for example. Richard Delgado, Critical Race Theory: The Cutting Edge (1995). In Crenshaw et al., supra note 7, there are 27 pieces, none of which address the subject of religion vis-a-vis people of color. I have selected these two fine collections of writings only because I think they represent a broad array of writers and topics.

n13. Crenshaw et al., supra note 7, at xiv.

n14. Id.

n15. Id.

n16. Id.

n17. See e.g., Thomas Bruneau, The Political Transformation of the Brazilian Catholic Church (1974), where he notes that those working within the Catholic Church are not free actors. They are not
autonomous or independent or free to set their own goals. Id.

ESSAY: FALLING FROM GRACE: A MEDITATION ON LATCRIT II

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BIO:

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SUMMARY: ... In the context of a society which justifies de jure discrimination against gay men and lesbians on Judeo-Christian religious grounds, I felt it was appropriate to point out the irony of our conversation taking place in a Catholic institution surrounded by religious images. Religion, reflecting diverse spiritual paths, plays a prominent role in our communities, but what impact does it have on sexual minorities in our communities? To start with the obvious, no religious organization fully accepts gay men, lesbians, bisexuals, or transgender people as members of their community. What is different for the Asian-American gay men and lesbians who "come out" in their communities is that homophobia complicates their sense of community. For example, although our languages may have words that describe male homosexuality or gay men, it is difficult to find words to identify lesbians in Asian cultures. Furthermore, gay men, lesbians, bisexuals, and transgender people, including people of color, have built spiritual homes based on mainstream western religion. Perry started the church to serve the spiritual needs of gay men and lesbians. Other denominations have adopted policies supporting equality for gay men, lesbians, and bisexuals. ...

[*437]

On Saturday morning at LatCrit II, the conference took an unexpected turn during the panel titled: LatCrit Theory and Asian-American Legal Scholarship: A ComPitive Discussion of Non-White/Non-Black Positionalities. The panel started out as a breakfast conversation between Berta Esperanza Hernandez-Truyol, Sumi Cho, and me, and finished with Jerome Culp and Rachel Moran providing commentary. The panelists raised questions and concerns about the past essentialization of race in Critical Race Theory; the Pilels among issues of race, culture, and ethnicity raised by LatCrit and Asian-American legal scholars; and the problem of the essentialization of a Latina/o and Asian-American identity that this comparison necessarily entails. They also raised concerns about the political complications that gender, class, race, and sexual orientation raise and the varied ways that our identities play out their differences vis-a-vis the material lives of all people in the United States. We intended our breakfast conversation to be both a catalyst for discussion and a change of pace from the series of intense panel presentations that had taken place over the course of the preceding two days. In that regard, we were successful, but the surprise turned out to be the substance of the discussion. Rather than focusing on LatCrit and Asian-American legal scholarship, participants spent the next four hours in sometimes-heated debate over the role of religion. ...

[*438] In the course of our breakfast conversation, I remarked that gay Asians have relatively low visibility because, culturally, we do not talk about sexuality. At the same time, the gay rights movement has enabled a "queer" voice in our respective communities despite a history of white male dominance within the gay, lesbian, bisexual, and transgender movement and the corresponding white male supremacy, and has contributed to the development of queer communities of color. I said, "[the movement] allows us to claim [a] space that recognizes our existence." Having noted that many gay, lesbian, bisexual and transgender Latina/o and Asian-Americans are beginning to feel comfortable in their own (queer) skin, I went on to make an observation. I commented about the space in which we had convened the plenary session and about the way that religion, that is, Roman Catholicism, had percolated throughout the prior sessions. In the context of a society which justifies de jure discrimination against gay men and lesbians on Judeo-Christian religious grounds, I felt it was appropriate to point out the irony of our conversation taking place in a Catholic institution surrounded by religious images. ...

[*439] I thought it odd that at a critical conference we were uncritically invoking religion through blessings and prayer and images. I expressed this thought from a position of discomfort as a sansei who in my youth...
attended a Buddhist church (Shin or Pure Land) and as someone who now partially identifies as a non-Christian (atheist) lesbian critical race feminist. The comment was meant to be critical of two things: the most obvious being that Christian orthodoxy does not embrace gay, lesbian, bisexual and transgender people and, almost as obvious, that Latina/o identity is not easily defined by a culture focused on a common language and common religion. In the big picture of all the panelists' remarks, this comment was a very tiny part of the presentation. Yet, it struck a chord that led to a wide-ranging and emotionally charged discussion illustrative of the complications of the politics of identity. n9

Because there is no transcript of the ensuing discussion and I have no reason to trust my memory of it, I cannot report or recreate the conversation in this essay. Rather, I want to reflect further on religion and on Latina and Asian lesbians and on space. These reflections aim to begin an exploration of the "Borderlands" of LatCrit, Asian-American, and Queer legal scholarship. n10

I am mindful of the contributions that the Catholic Church makes to various liberatory movements, to individual spirituality, and to building community. But, blithe incorporation of Catholic tradition in a LatCrit conference raises a few questions that I will briefly and partially address. First, even given Roman Catholicism's significance in the lives of many Latinas/os, should we not also at least note that these Catholic roots stem from a violent and long history of colonialization? Second, what does "religion" have to do with Latina/o and Asian American identity? This inquiry raises the third question: what do we mean by "religion"? And finally, in what ways does "religion" bridge or divide us along race, class, gender, and sexual orientation lines? By raising these questions, I do not mean to detract from the values that religion imparts on a community and on individuals. Rather, a critical project dedicated to a reconstructive jurisprudence must recognize and understand historical domination and subordination in order to avoid preserving or duplicating hierarchical power relationships. Critical theorizing is difficult because it makes both external and internalized structures of oppression evident and reveals our own complicity. These conversations may cause discomfort and twinges of guilt, but without the fuller appreciation for the way structures of oppression operate that comes with these conversations, how can we expect to challenge unjustifiable subordination?

To that end, in the same way that Luz Guerra urged us to consider the colonialist history embedded in the term "Latino," it seems appropriate to suggest that we take note of the Catholic Church's relationship to colonialist conquest and patriarchy. Spanish missionaries and soldiers participated in the subjugation of millions of indigenous people in the Americas. Catholic clergy participated in violence and rape in the Southwest. In order to compel submission to their view of sexual morality, friars punished Pueblo Indians who practiced polygamy and curbed cross-dressing berdaches. n13 The Catholic Church continues to discriminate against women by limiting their role in the Church. n14 Acknowledging this history and continuing subordination illuminates the intragroup power differentials masked by an essentialized identity and engenders bridge building across the divides.

Catholicism is problematic not only from a historical perspective. Although influential, Catholicism is not ubiquitous in every Latina/o life. However, religion is important in community formation, even in Latinas/os' lives. Communities have gathered together weekly at Mass and have received educational and social services designed to assure survival in an often inhospitable society. But, numerous spiritual and religious influences shape the lives and communities of Latinas/os including other Christian denominations, Judaism, Islam, Buddhism, Santeria, Palo Mayombe and other African-Caribe traditions, Toltec and other indigenous traditions. n15 And certainly, atheists and agnostics can count Latinas/os among them. While LatCrit theory must deal with Catholicism's prevalence, the general presumption of a Latina/o religious homogeneity around Catholic tradition is faulty.

The diversity in religious tradition in Asian-American communities is more obvious than in Latina/o communities. n16 The variety of religious traditions playing a role in Asian-American lives include Hinduism, Buddhism, Shinto, Taoism, Sikhism, Cao Daiism, Islam, indigenous Pacific Island traditions, and Christianity (including Catholicism) among many others. These institutions influence and shape Asian-American lives and communities in many of the same ways that the Catholic Church influences Latina/o lives such that religion's role in community formation, support, and maintenance seems familiar. For many immigrant-based communities, the Church represents a safe harbor or base camp for a dispersed community. Family and social ties often revolve around spiritual or religious customs through holiday celebrations, observation of religious tenets, and church/temple activities. In my own experience, the Buddhist church bound my family by inculcating values and rituals which my grandparents practiced, but which we otherwise would have ignored. n17 More significantly, the Church was a site for social activity...
including youth activities, community picnics, and basketball. Even though it has been over 20 years since I went to church for a service other than a funeral, many of the relationships I began through the Church remain important to me. Thus, my religious affiliation serves as a tie to an anchored community.

The importance of religious institutions in forming and maintaining Asian-American communities has a negative aspect. That is, religious affiliations identify uncivilized non-citizens. The prevalence or the perception of non-western religious traditions, such as Buddhism, in Asian-American communities helps to place Asians further outside of the boundaries of the Judeo-Christian culture in America because their religious practices are foreign. n18 With respect [*442] to religion, a problem with identity formation of Asian-America is that Asian-American identity is represented religiously around a conglomeration of filial, atheistic, and mystical belief. This representation is both racialized and racist in the way it relies on and supports stereotypical notions about Asians. The characterization of religion among Asians as a strange, unnatural belief system can be deployed to stir up anti-immigration sentiment. n19 Finally, this characterization works to divide the community by creating a sense of moral superiority and civilization among those who claim Christianity.

The connection of religion to Latina/o communities warrants further examination through the same lens used to examine this Asian-American experience. Like Asian Americans, Latinas/os suffer discrimination on the basis of "foreignness," which stems at least partially from language. n20 A perception that Latinas/os are Catholic or Christian helps create the perception that Latinas/os fit more easily into mainstream culture because their basic moral values share common ground with the white Protestant roots of this country's "forefathers." n21 In this instance, religion acts as a proxy for a [*443] civilized middle-class whiteness. Uncritically accepting Catholicism as a part of Latina/o identity thereby helps perpetuate the dominance and moral superiority of Christian values in American society. Christian supremacy bolsters racist attitudes towards those affiliated with outsider religious practices, such as Santeria, because it perpetuates notions of outsiders, foreigners, or others by conjuring up images of "uncivilized," "pagan," "tribal" rituals. These terms code non-Judeo-Christian practices as non-white, uneducated, and primitive. Moreover, this coding alienates segments of a pan-ethnic Latina/o community on race and class lines by exploiting an internalized colonial/racist Euro-Christian superiority.

This portrayal facilitates a distinction between Asian-Americans and Latinas/os that can act as a wedge between our communities. Although religion may be portrayed as a characteristic that distinguishes Latinas/os from Asian-Americans and from "Americans," the communities share similar spiritual affiliations. As mentioned earlier, both Latinas/os and Asian-Americans have a rich and varied religious tradition and in some cases these traditions overlap. A legacy of missionary work in Asia and the Americas has firmly established Protestant Christian congregations in both communities. Indeed, the colonial history of the Philippines Pileges that of many Latina/o communities with a history of colonization dating back to the 16th century. The predominant religious affiliation among Filipinos is Roman Catholicism. In this regard, Filipinas/os culturally share more with Latinas/os than with other Asian-American subgroups. n22 Asian-Americans and Latinas/os have spiritual links in a variety of traditions. Recognizing and understanding both the commonalities and religious diversity in all of our communities can begin to diminish the grip of Christian moral supremacy in American society.

Religion, reflecting diverse spiritual paths, plays a prominent role in our communities, but what impact does it have on sexual minorities in our communities? To start with the obvious, no religious organization fully accepts gay men, lesbians, bisexuals, or transgender people as members of their community. Interpretations of religious texts go so far as to advocate the death penalty for homo [*444] sexuals. n23 Others, while adopting more tolerant policies for ministering to and accepting sexual minorities, continue to cling to the belief that divine or natural law insists that sexual relationships be confined to heterosexual marriage. The end result is a limited acceptance of the "sinner," but not the "sin." In particular, the Catholic Church, while preaching tolerance for gay people, advocates against gay rights. The Church has stated that gay people can be discriminated against in housing and should not be allowed to teach. n24 An uncritical incorporation of Catholicism into a Latina/o identity supports a heterosexual hegemony built into the rhetorical, institutional, and economic structures of oppression. n25 The LatCrit, Critical Race Theory, and critical Asian-American legal scholarship projects seeking to begin to formulate a contextualized and historicized understanding of these structures, which changes the way we think about the spaces in which we gather and opens up spaces in our theoretical work.
Not all faiths, including Buddhism, have taken an explicit position on sexual minorities. Nevertheless, some people have interpreted Buddhist teachings as neutral towards homosexuality. In defining "right conduct," Buddhist teachings require abstention from sexual misconduct, but do not explain sexual misconduct further. Considering this rule in the context of a central tenet in Buddhism to abolish all suffering would suggest that sexual misconduct involves oppressive, non-consensual sex. Sexual misconduct would not involve consensual sex, especially consensual sex in a loving relationship. Moreover, Buddhism's anti-oppression goal requires living a life of compassion and one committed to understanding the conditions required for happiness and welfare for all living creatures. Buddhism, thus, urges a contextualized and particularized understanding of structures of oppression and represents an alternate religious/moral foundation to which we can connect the equality and liberty ideals of American law. However, even though we can ascribe this anti-subordination spin to the religious teachings, we must also consider the possibility that there are not specific edicts about sexuality because it is so culturally repressed in Asian communities where Buddhism and other religions, which do not take a position on homosexuality, are prevalent. n27

As Dorothy Fujita Rony notes, "topics of sexuality are regularly shrouded in particular forms of silence in the Asian-American community. It is understood that you do not bring up the topic of sex in polite conversations without risking the disapproval of community elders." n28 The existence of gay, lesbian, bisexual, and transgender Asian-Americans challenges this silence because merely acknowledging our existence means breaking the taboo over discussions about sexuality. My own "coming out" to my family is illustrative of this silence. I have never uttered the "L" word to my parents. In fact, I cannot recall a conversation lasting more than two minutes about sex or sexuality. We have managed to deal with my lesbian identity by not talking about it. n29 Given these circumstances, discovering that a basic cultural institution such as a church could look favorably upon gay and lesbian members within the community does not mean that the community itself looks favorably upon people like me who choose to live their (queer) lives openly. Rather, the silence may have more to do with homophobia and denial.

While a perception may exist that homophobia is greater in communities of color, including Asian-American and Latina/o communities, the reality is that families of queer people of color and non-Asian families react similarly. These reactions span the spectrum from acceptance to disowning and violence. n30 Oftentimes, the less acceptable responses stem from a sense of shame, while others simply believe homosexuality is unacceptable or wrong. n31 What is different for the Asian-American gay men and lesbians who "come out" in their communities is that homophobia complicates their sense of community. Having to distance or disconnect yourself from your community because of homophobia means having to disconnect from cultural ties which enable survival in the face of racism. Combining the general reluctance to talk about sexuality with the possibility of disconnection from the community compounds the silencing effect of either circumstance.

The silence extends further. Asian cultures' strict attitudes governing narrowly defined sexual and gender roles offer little room to express gay identity. n32 Asian-American communities are built around traditional Asian notions of family with fiercely heterosexual and male-centered norms. The result is a practical erasure of lesbian existence. For example, although our languages may have words that describe male homosexuality or gay men, it is difficult to find words to identify lesbians in Asian cultures. n33 The denial of lesbian existence is made easy when the words to talk about us do not exist. One consequence of this omission is that it upholds the notion that lesbians or bisexuals are only found in Western societies. When family or community members deny the possibility of homosexuality by asserting the claim that homosexuality is a result of assimilation and acculturation in America, they alienate sexual minorities as "foreigners" to their communities. n34

In order to counter this alienation, those asserting a queer identity in Asian communities have begun the project of uncovering and reclaiming a gay and lesbian past. Researchers have begun attempting to recover a history of expressions of same-sex sexuality in the early Chinese "bachelor societies," n35 in the internment camps during World War II, n36 in late imperial China, n37 among Chinese feminists in Japan in the early 20th century, n38 in the Kama Sutra, n39 and in female kingdoms [sic] in ancient India. n40 Interestingly, much of this uncovering of history of gay and lesbian roots leads us back to religion. People of color searching for the hidden history of gay and lesbian lives have begun to discover this history in the religious and spiritual traditions lost through migration and acculturation or colonialist suppression. These rediscoveries include the ceremonial position of lesbian and transgender people in indigenous berdache tradition, n41 homoerotic traditions and practices in Sufi Islam, n42 transgendered spirits in Yoruban tradition, n43 and the images on South Asian temples...
The discovery of these ancient and historical roots defends against the claim that homosexuality is foreign to communities of color and revitalizes cultural traditions nearly lost in the face of a dominant Euro-Christian culture.

Furthermore, gay men, lesbians, bisexuals, and transgender people, including people of color, have built spiritual homes based on mainstream western religion. Efforts to organize gay-centered or gay-friendly churches have had a transformative effect on traditional religious institutions. One example is the Universal Fellowship of Metropolitan Community Churches (MCC) founded in 1968 by the Reverend Troy Perry, a minister defrocked by the Pentecostal church because he is gay. Perry started the church to serve the spiritual needs of gay men and lesbians. Over the years, MCC has made an effort to accommodate the variety of religious faiths held by the diversity of people who began attending services at MCC as an alternative to often hostile houses of worship. MCC has expanded internationally and has begun to create a place of worship that includes heterosexual and queer people of all colors. Other denominations have adopted policies supporting equality for gay men, lesbians, and bisexuals.

The presence of gay, lesbian, bisexual, and transgender people of color in various spaces has had and continues to have a transformative impact. Our existence challenges beliefs and practices of religious institutions, and our participation in discovering hidden histories connected to spiritual practices contributes to a tremendous diversity of beliefs and values to guide our communities. Attention to this diversity requires consideration of the connections that spirituality has to our internal conceptions of identity. Moreover, we need to be cognizant of notions externally imposed on us even if we do not adopt spiritual beliefs. Reflecting on these connections reveals loci needing change and healing and reveals the possibilities for coalition and transformation. Among these possibilities is the potential for rethinking our conception of "religion" and the ways this reformulation can inform law.

FOOTNOTE-1:


n2. Of course, this discussion covered several other topics, but from my perspective, the discussion felt like an implosion around sexuality and religion. Also, my reference to the discussion is not to say that religion should not be a factor when making comparisons and differentiating LatCrit and Asian-American legal scholarship. Finally, I do not mean to imply that the turn of events was negative. On the contrary, the discussion was an illuminating and necessary part of the project of developing a progressive jurisprudence.

n3. Throughout this essay I use a variety of terms ("sexual minorities," "gay," "lesbian," "queer," and "homosexual") to refer to sexual minorities such as gay men, lesbians, bisexual and transgender people. When I use "gay" or "queer," I do so to avoid having to go through the list, but not to purposely exclude. I also intend my use of the term "queer" to correspond to Francisco Valdes' use of "Queer" with a capital "Q." Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 Cal. L. Rev. 1, 346-50 (1995). Also, as Darren Rosenblum writes, """"The term 'queer' in its openness... suggests the truly polymorphous nature of our difference, of difference within the lesbian and gay community... Queer includes within it a necessarily expansive impulse that allows us to think about potential differences within that rubric.' Thus "queer" is a political category permitting both the recognition of differences and intersectionalities and expansion to a continuum of subversive people." Darren Rosenblum, Queer Intersectionality and the Failure of Recent Lesbian and Gay "Victories", 4 Law & Sex. 83, 87-88 (1994) (quoting Philip Brian Harper, Multi/Queer/Culture, in 24 Radical America 30 (1990)).


n5. Transcript, supra note 1, at 2.

n6. Actually, on the transcript, my remark is incoherent. I mention "invoking Christianity... explicitly... invoking the
passages from the Bible." Id. The scripted notes for my part of the presentation indicate that I intended to say, "we have experienced numerous invocations of Christianity which is not predominant among Asians." I made this comment while pointing out the religious artwork on three walls of the room inside of the building that formerly housed Catholic Marianist sisters and now houses the St. Mary's legal clinic. As I recall, the walls had a depiction of the Last Supper, the Madonna and Child, and the Crucifixion.


n8. St. Mary's University School of Law graciously hosted the conference. The plenary sessions on Saturday took place at St. Mary's University School of Law Center for Legal and Social Justice.

n9. Sansei is the third generation in a family of Japanese heritage outside of Japan. Issei, or first generation, is the generation that immigrated from Japan (e.g., my grandparents) and Nissei, or second generation, is the first generation in a family born outside of Japan.

n10. Here I do not mean to take credit for the eruption that followed the panel. My own observations lead me to believe that a palpable tension existed due to a variety of factors and at some point, even without my remarks, this unexpected turn may have eventuated.

n11. "Borderlands" represent both the frontiers and limits of space and the overlapping physical, social, political, and cultural spaces that we simultaneously occupy. See, e.g., Gloria Anzaldúa, Borderlands/La Frontera: The New Mestiza (1987) and Eric Estuar Reyes, Asian Pacific Queer Space, in Privileging Positions: The Sites of Asian American Studies (Gary Y. Okihiro et al. eds., 1995) [hereinafter, Privileging Positions].


Islam being a religion that Americans know little about, but one whose history has been violently entwined with that of Christian Europe for a millennium and a half, it is not difficult to understand how a few violent and dramatic events can evoke
emotional reactions in which half-truths, dim recollections of history, and feelings of racial and cultural antipathy take the place of an earnest quest for understanding.


n19. The FBI arrested and detained men who held leadership positions in Buddhist churches on the West Coast during WWII on the basis that there was a greater risk of enemy contact. For instance, "the association between Buddhism and traditional Japanese-ness was reinforced by the officially sanctioned Pnoia during WWII in which being a Buddhist made an individual Japanese-American and his or her family more suspect in terms of presumed loyalty to the United States." Stephen S. Fugita & David J. O'Brien, Japanese American Ethnicity: The Persistence of Community 89 (1991).

n20. See, e.g., Mark. L. Adams, Fear of Foreigners: Nativism and Workplace Language Restrictions, 74 Or. L. Rev. 849 (1995); Daina C. Chiu, The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism, 82 Cal. L. Rev. 1053 (1994); Mari J. Matsuda, Voices of America: Accent Discrimination Law, and Jurisprudence For the Last Reconstruction, 100 Yale L.J. 1329 (1991). At an individual level, the irony is that not all Latinas/os speak a language other than English. Yet, if a woman can pass as Latina, she may be presumed to speak only Spanish! Also note that construction of race figures in too because other immigrant communities come from non-English speaking countries, but are not similarly regarded as foreign. Also, Latina/o identity becomes raced by language given that phenotypically, many Latinas/os are not a foreign race (i.e., they may look white or black).

n21. Of course, acceptance of Christian diversity is relatively recent and has its limits. But, these days, religion does not figure as much in to one's sense of self-worth. See William N. Eskridge, Jr., A Jurisprudence of "Coming Out": Religion, Homosexuality, and Collisions of Liberty and Equality in American Public Law, 106 Yale L.J. 2411, 2412 (1997). This view seems true only for mainstream Christian and Jewish denominations. Representations of fundamentalists and orthodox religions are rife with stereotypes and misconceptions, which often result in marginalization. See, e.g., Bruce Buursma, A Holy War Against the Media, Chi. Trib., Apr. 20, 1986, at A12.

n22. Filipinos are ethnically diverse and include people with Spanish, Chinese, Japanese and other European heritage as well as indigenous heritage and cultural influence. In fact, Filipinos were grouped together with Mexicans and Puerto Ricans in John H. Burma's monograph first published in 1954. Burma notes, "these groups may legitimately be considered in one volume since they all share, in varying degrees, a background of Spanish culture." John H. Burma, Spanish-Speaking Groups in the United States viii (1974).


n24. The National Conference of Catholic Bishops recently issued a Pastoral letter clarifying the Vatican's position on homosexuality in which the Bishops recognize that gay, lesbian, or bisexual identity is fixed and therefore parents and family of gay men and lesbians should accept their relatives. NCCB Committee on Marriage and Family, Always Our Children: Pastoral Message to Parents of Homosexual Children and Suggestions for Pastoral Ministers, in 27 Origins 1 (Oct. 9, 1997). But, the Catholic Church continues to uphold discrimination in employment, housing, and marriage. See, e.g., The Vatican, Some Considerations Concerning the Catholic Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons, (June 1992) (visited Feb. 16, 1998) <http://www.odyssee.net/prince/rights.html>.


n26. Id.
But see Vatsyayana, The Complete Kama Sutra (Alain Danielou trans., 1994) (discussing both male and female homosexuality in an ancient Hindu context).


Since we do not talk about it, I cannot say how long I have been "out" to my family. I have been "out" to myself in varying degrees for roughly 12 years. In spite of this silence, my family inquires about my partner and includes her in much the same way they included my male partners.


Religion figures into the belief that homosexuality is wrong or unacceptable.


Vivien W. Ng offers several Chinese words to describe male homosexuality in Homosexuality and the State in Late Imperial China, in Hidden From History: Reclaiming the Gay & Lesbian Past 76, 77 (Martin B. Duberman et al. eds., 1989). But Eric C. Wat, in describing his relationship with his parents notes, "to introduce dialogue will be difficult when homosexuality is not in one's verbal or conceptual lexicon." Eric C. Wat, Preserving the Paradox: Stories from a Gay-Loh, in Asian American Sexualities, supra note 30, at 71. Lesbians in Thailand recently created a word - "anjaree" - meaning "someone who follows non-conformist ways." Took Took Thongthiraj, Toward a Struggle Against Invisibility: Love between Women in Thailand, in Asian American Sexualities, supra note 30, at 163, 164. In Hindi, "Our language does not have a word for who we are or how we feel." Sita to Radha, in Fire (Trial by Fire Films, Inc., Deepa Mehta & Bobby Bedi prods., 1996).

The silence around or denial of lesbian existence based in a male-centered culture also enables a weird kind of tolerance for lesbian relationships by creating a presumption that two women living together do so because they could not find husbands. This same mentality enabled "romantic friendships." See generally Lillian Faderman, Surpassing the Love of Men: Romantic Friendship and Love Between Women from the Renaissance to the Present (1981).

This notion of gay identity as Western is not universally held. Parents of Asian-American lesbians and gay men had knowledge of other lesbians and gay men while growing up and/or from their native countries. Hom, supra note 30, at 38. Among Latinas, Cherrie Moraga discusses the notion of a lesbian as "traitor to her race... Lesbianism can be construed by the race then as the Chicana being used by the white man, even if the man never lays a hand on her... homosexuality is his disease with which he sinisterly infects Third World people." Loving In The War Years 113-14 (1983).

Jennifer Ting, Bachelor Society: Deviant Heterosexuality and Asian American Historiography, in Privileging Positions, supra note 11, at 271.

See Mona Oikawa, Locating Myself within Histories of Dislocation, in
Privileging Positions, supra note 11, at 265.

n37. See Ng, supra note 33, at 29.


n40. Id. at 29. By offering these examples, I do not mean to infer the existence of a gay identity as we experience identity now. Rather, I offer them as examples of same-sex relationships that may have been acknowledged and perhaps tolerated by other members of the communities.


n42. See Lourdes Arguelles & Anne M. Rivero, Queer Everyday Life: Some Religious and Spiritual Dynamics, in New Lesbian Studies, supra note 38, at 177.

n43. Id.

n44. See ABVA, supra note 39, at 22; see also id. at 19 (photograph).

n45. See, e.g., Resolution A-71 of the 1976 Convention of the Episcopal Church, available in <http://www.religioustolerance.org/hom epis.htm> (visited Mar. 27, 1998) ("This General Convention expresses its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens, and calls upon our society to see that such protection is provided in actuality.").
LENGTH: 11350 words

ESSAY: ON BEING AN "OUT" CATHOLIC: CONTEXTUALIZING THE ROLE OF RELIGION AT LATCRIT II

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BIO:

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SUMMARY: ... Attending college and graduate school in the San Francisco Bay Area, which is very racially, ethnically and religiously diverse, and attending law school in Boston, a similarly diverse major metropolitan area, significantly broadened and made more inclusive my views about Latina/o identity and specifically about Latina/o religious identity. ... The University and the Law School are both situated in a working class Mexican-American barrio. ... That this issue was a major component of the Saturday discussion was quite ironic given the Law School's recent history with respect to issues of sexual orientation. ... Assume further that someone in the LatCrit II audience had objected that the content of the poem was bothersome to him or her and his or her morals. ... Thus, rather than being associated with the Catholic Church's historical repression, oppression, violence, homophobia and sexism, I prefer to be identified with the Law School's Center and clinics which just last week gave hope and support to many of San Antonio's less fortunate citizens, irrespective of race, gender, ethnic origin, or sexual orientation. ... As previously stated, under Dean Aldave's leadership the Law School had historically excluded the United States military from utilizing the school's career services offices for recruitment purposes, due to the military's refusal to sign the Law School's policy of non-discrimination on the basis of, inter alia, sexual orientation. ...

[*449] In my office at the St. Mary's University School of Law in San Antonio, Texas, I have a reprint of an original work by Morales n1 which depicts a beaten and battered young, Latino male wearing a white tank top and sporting several tattoos, open wounds and scars. His hair is disheveled and his eyes look very tired. Emblazoned and superimposed on his chest and his white tank top is the image of the Virgen de Guadalupe, the patron saint of Mexico. n2 Across the bottom of her image are the following words: "Perdoname Virgencita" ["Forgive me, Virgin"]. I bought the poster and had it framed and mounted for my office because of the powerful symbolism which the work's images have for me. Here is a down and out young cholo/pachuco n3 who probably never or rarely attends church, but has nevertheless had notions of Catholicism so ingrained in him that he still seeks forgiveness from the Virgen de Guadalupe. When people enter my office and view the framed print, they often ask whether I personally know the individual depicted. My response is somewhat loaded. I typically respond yes, I know the individual, because he is every Chicano that I grew up with.

[*450] Of my high school graduating class in Lubbock, Texas, which included approximately 175 Mexican-American males in a predominantly Mexican-American high school, I am to date the only Latino that I am aware of that has obtained a college degree. n4 My Latino high school classmates have pursued a wide range of career paths that are very different than mine. Some have killed and some have been killed, some have attempted suicide and some have succeeded, some have become addicted to drugs and some have dealt drugs, still others are currently in or have previously been in and out of jail. Most, however, are employed, law-abiding working-class individuals attempting to lead an honest and productive life. In general, I consider my living Latino high school classmates' chosen career paths to be no better and no
worse than my own. Despite these differing lifestyles, however, I can always be sure to see a good number of these individuals in my hometown at Midnight Mass on Christmas Eve with their wives and children, passing on the Catholic traditions with which we were raised.

Given my life experiences, I believe the poster in my office speaks directly to the central role of Catholicism in many, many working-class Mexican-American families living in the Southwestern United States. Moreover, as illustrated by the poster's disturbing images, the role and importance of religion both historically and in contemporary Chicano/a identity is an issue that I consider of utmost importance in further developing and crafting LatCrit theory.

Accordingly, the first part of this essay will discuss the importance of Catholicism, particularly the Virgen de Guadalupe, in my own life as a working class Tejano. This discussion is both important and necessary in order to contextualize the role of religion and the manner in which the issue arose at LatCrit II. My central premise is that for many working class Chicano/as living in the Southwestern United States, the religious personal is often transformed, perhaps even unconsciously, into the secular political, and that understanding and recognizing this phenomenon is crucial to furthering LatCrit theory.

Next, I briefly summarize the recent history of the St. Mary's University School of Law and its attempts to identify more closely with Catholic social teaching. In this way, I attempt to contextualize my experiences at LatCrit II regarding the broader issue of religion and, in particular, the issue of sexual orientation. I also theorize about how these experiences can inform the on-going and continuing development of LatCrit theory. Understanding the religious personal/secular political concept, I argue, should help the reader to appreciate more fully not only the events at LatCrit II, but also the reason why religion and its role in Latina/o communities must continue to be a significant aspect of LatCrit as a whole.

I. My Own History With Catholicism

While I cannot speak for all Latina/Latinos, I can speak directly to my own experiences as a third-generation Mexican-American male who was born in a small town and raised as a Catholic in a mid-sized city in the Texas panhandle. While the Catholic Church was by no means the only church in my working class, Mexican-American barrio, it was by my admittedly unscientific estimation the church of choice for approximately 95% of all my barrio's inhabitants who chose to practice any religion. Thus, early on, I equated the Catholic Church exclusively with Latina/os and, more specifically, with Chicana/os. Religious celebration of baptisms, quinceañeras, weddings, and funerals, all were part of - and to me synonymous with - life as a Mexican-American.

Indeed, because I attended heavily segregated elementary and junior high schools, I did not meet a non-Latina/o Catholic until high school. I still recall my shock at the realization that Anglos could be Catholic. While I had met a few non-Catholic Latina/os, I had never met a Catholic Anglo. Until that time, I had assumed that Anglos were Protestant and Protestant only - it was not until I went to college that I met anyone from a non-Christian background, including Jews, Hindus, Buddhists, and others.

Attending college and graduate school in the San Francisco Bay Area, which is very racially, ethnically and religiously diverse, and attending law school in Boston, a similarly diverse major metropolitan area, significantly broadened and made more inclusive my views about Latina/o identity and specifically about Latina/o religious identity. Nonetheless, the pervasiveness and importance of the Catholic Church in Latina/o lives was continually reinforced throughout my higher education.

For example, at my college graduation from Stanford University we held separate Chicano Graduation ceremonies that augmented, not replaced or displaced, the mainstream college graduation activities. A significant part of Chicano Graduation consisted of a Catholic Mass conducted in Spanish by a Mexican-American priest. I still recall the battle I had to wage with the Anglo University priest about our desire and need to have a Mexican-American priest, and not only a Spanish-speaking priest, conduct this mass as part of our Chicano Graduation. Latinos and Latinas graduating and taking part in Chicano Graduation believed that our parents who had raised us Catholic would feel truly honored to have a celebratory mass in Spanish conducted by a Chicano priest. Therefore, we held our ground until we found a Chicano priest willing to perform the mass. Our predictions proved true as the mass was standing room only.

Thus, while I agree with many of Professor Ota's observations in her symposium essay, I think it important to emphasize the significance of Catholicism in the Latina/o community. Professor Ota writes: "although influential, Catholicism is not ubiquitous in every Latina/os' life. Indeed religion forms a cultural basis for community, and in particular, the Catholic church is central to many Latina/o communities." n7 Although Catholicism is admittedly not the only religion for all Latina/os, I do not believe that one can
overestimate the power and influence - both good and bad - that the Catholic Church has had on particular Latina/o communities and individuals and, most specifically, working-class Mexican-American communities in the Southwest.

Recent findings conclude that somewhere between 80 and 90 percent of all Hispanics identify themselves as Catholic. Moreover, the estimated 20 million Hispanic Catholics in the United States constitute approximately 30% of U.S. Catholics, and according to recent studies, "Hispanics will constitute the majority of U.S. Catholics within 25 years." Notably, Bishop Charles Grahmann of Dallas has proclaimed that "the future of the Catholic Church in the United States is in the Spanish language." Accordingly, while Professor Ota may be correct that "although influential, Catholicism is not ubiquitous in every Latina/o life," the accuracy of the statement should in no way diminish or ignore the prevalence of Catholicism in many Latina/o's lives, particularly working-class, Chicano/a families residing in the Southwest. Carlos Villareal has written that Chicanos have "a discernible culture defined by the use of Spanish, familism, machismo, respect for the elderly, and communal Catholicism influenced by idolatry." Accordingly, as with other issues regarding Latina/o identity, it is extremely important to recall that when discussing Latina/o or religious identity, umbrella terms such as "Latina/Latino" or "Hispanic" are problematic for several reasons.

Catholicism may not be as much of an identity issue for other Hispanic subgroups, I would argue that for the vast majority of Mexican-Americans living in the Southwest United States, the Catholic Church remains a highly significant force largely because it has been accepted, rejected or otherwise confronted and dealt with by these individuals. As such, Catholicism is a force which must be meaningfully addressed in any serious attempt to contribute to an evolving LatCrit theory.

My life experience with Catholicism speaks directly to this issue. Had I remained in the barrio where I was raised and not had the educational opportunities and experiences that I have been fortunate enough to have had, I am not so sure that my appreciation of Latina/o religious heterogeneity would have come about at all. Rather, I most likely would have met and married a working-class Chicana whose own background was rich in Catholic tradition. This is certainly true of my sisters and all of my cousins who have re[454]mained in my hometown. Each of them has married a Chicano/a who is Catholic, even if only marginally. The one exception to this phenomenon is a cousin who married a white non-Catholic man from a large Texas city. The irony of my cousin's situation should not escape the reader, my only relative to marry a non-Catholic is someone who also married "outside the race": i.e. a non-Chicano.

A. Mexican-American Catholicism and La Virgen

No discussion of Mexican-American Catholic identity would be complete without addressing the role of the Virgin Mary. My mother is named Guadalupe. This is because she was born on December 12th, El Dia De La Virgin De Guadalupe (the day of the Virgin Mary), the patron saint of Mexico. Mexican tradition holds that if a child is born on this date, the child should bear the Virgin's name. Thus, within the Mexican and Mexican-American community, many individuals named Guadalupe or Lupe were born on December 12th.

1. La Virgen de Guadalupe

Because of my mother's name, St. Mary, or as we referred to her in Spanish, la Virgen de Guadalupe or simply la Virgen, played a major role early in my life. Throughout my childhood, I remember my grandparents always bringing my mother some type of gift on her birthday. This may not be significant or exceptional to many readers, but for my grandparents it was. My maternal grandparents had 13 children and, particularly as they grew older, were not always able to remember the birth dates of each of their children. In addition, as uneducated immigrants from Mexico, my grandparents had spent their adult lives as migrant farm workers with no rights to a pension or other compPble benefits upon their retirement. Thus, as they grew older, my grandparents' financial situation was often precarious. Nonetheless, each December 12th they were there for my mother. How was it that my grandparents were able to re[455]member my mother's birthday? Largely it was because, within our Mexican-American barrio, El dia de la Virgen never passes unnoticed. Rather, traditional songs are sung, masses and procession marches are held, and there are reenactments of La Virgen's appearance to Juan Diego in Mexico. In short, the entire day is a day of celebration.

2. La Virgen's Image

In addition to my mother's name, La Virgen's image was everywhere during my childhood. First, my hometown church - Our Lady of Grace - was named in honor of the Virgin Mary. La Virgen's image adorned the homes of my grandparents, my aunts and uncles, our neighbors, and even the local businesses in my barrio.
less traditional settings such as the detailing work of low rider cars, as tattoos on both women and men, and as pocketbook inserts. n17

Along with these humanly created images of the Virgen, there were constant sightings and reported apparitions of the Virgen in my hometown and the nearby areas. Typically, these sightings or apparitions were accompanied with talk of the Virgen needing to appear because of the wayward ways of the community, or that the Virgen was appearing because the apocalypse was near.

3. Petitions to La Virgen and the Shrine in San Juan, Texas

In addition to paying homage to La Virgen, we were also taught and encouraged to call on the Church and its saints during times of need. Not surprisingly, in my own family, this resulted in an extreme reliance on the Virgen. For instance, I recall that when my mother was desirous of something or in times of crisis, my mother would pray a rosary to or light a candle for the Virgen, despite the availability of the many saints within the Catholic Church.

Additionally, in the tiny South Texas town of San Juan, there is a shrine, Virgen de San Juan del Valle Shrine, which is very well known within the Mexican-American community of the Southwest. The shrine is annually host to thousands of people who make pilgrimages to visit La Virgen. n18 A common practice is to promise La Virgen to visit her shrine if she intercedes with respect to a petitioner's petition. Sometimes the visit is contingent on whether the particular petition is actually granted, but not always. One of the more common promises is from families with sick children. Oftentimes these families promise that if the Virgen helps to cure the child's illness, the parents will take the child to visit the shrine, and that until such cure is forthcoming the parents will not cut the child's hair. Other common promises are to refrain from particular behavior, such as smoking or drinking, if the Virgen grants a particular wish. Accordingly, one of the more moving places within the shrine is what is referred to as El Cuarto de los Milagros [the miracle room]. It is in this room that the Shrine's visitors deposit locks of children's hair, crutches, photographs, paintings, and other similar trinkets and symbols in the belief that the Virgen has heard their petitions and responded by performing a miracle.

4. The "Last Supper of Chicano Heroes" at Stanford

Perhaps one of the strongest testaments to the importance of La Virgen in Mexican-American culture is a mural found at Stanford University. A few years ago, I had an opportunity to visit my old dormitory, Casa Zapata, at Stanford. For several years, Casa Zapata has served as the Chicano "theme" house. In connection with its role, Casa Zapata has several murals on the walls throughout the facility which depict various aspects of Chicano culture and history. A mural, entitled "Last Supper of Chicano Heroes," was added after my departure from Stanford and is prominently displayed in Casa Zapata's cafeteria. Like Michaelangelo's Last Supper, this mural depicts several individuals seated at and around a large table. The late Jose Antonio Burciaga, who had painted some of the other Casa Zapata murals, explained that at the time he was inspired to paint the mural, he struggled with the issue of exactly which heroes to include. n19 Burciaga explains that he decided to survey a sample of Chicanos, including Stanford students and various "older activists," regarding their "heroes." Burciaga chose his mural's heroes based on these responses. Burciaga explains that he chose to seat the top thirteen cited heroes and heroines at the table, and included others standing around the seated individuals.

The first time I saw this very large mural, I was overwhelmed both emotionally and psychologically. The mural touched me on multiple levels and in multiple ways because much of the mural's contents resonate with my own life experiences. I stared at it for what seemed like hours. The individuals depicted as heroes for the Chicano community were diverse and varied, including Ernesto "Che" Guevara, Cesar Chavez, Dolores Huerta, Martin Luther King, Jr., John F. Kennedy, Carlos Santana, Frida Kahlo, and some of the Latina/o members of the Casa Zapata cafeteria staff. Significantly, suspended above all of these individuals who are either seated or standing near the table is La Virgen de Guadalupe, who appears to be floating over the other individuals depicted. Burciaga relates that the Virgen, "received enough votes to be seated at the table, but out of respect occupies a loftier place." n20 Accordingly, the Virgen is elevated above the table and appears to be looking down, keeping watch over the mortals below her.

Finally, across the bottom of the mural's table, are the following words: "... and to all those who died, scrubbed floors, wept and fought for us." Burciaga has explained that this quote was inspired by a Stanford student who answered Burciaga's survey inquiring as to the Chicano student's heroes by responding, "all the people who died, scrubbed floors, wept and fought so that I could be here at Stanford." n21 As I read these words, my eyes welled up. My mother with a sixth grade education did, in fact, scrub floors so that I could attend Stanford University, and later, Harvard Law School. Similarly, my father, who has a third-grade education, worked as a construction worker in the
blistering cold and unbearable Texas heat toward this same end. Thus, my parents, who were not rich either in material wealth or educational history, nonetheless provided me with many of the indispensable tools necessary for me to gain acceptance into and achieve at least some success at two of the finest institutions of higher learning in the world. Not bad for a Chicano kid from Lubbock, Texas, who neither knew nor understood the English language when he first entered public school. One of the most important gifts which my parents, and primarily my mother, provided me was and continues to be my spirituality and religious grounding in Catholicism.

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B. Chicano/as, Catholicism, La Virgen and LatCrit Theory

The existence of the shrine in San Juan, and the results of Burciaga's survey - as well as the decision he made to include the Virgen, and the specific manner in which he chose to include her image in the mural - to me, speak volumes about the role of religion, and more specifically the Catholic Church and La Virgen, in the lives of many Chicano/as. That a shrine in an obscure, tiny Texas town continues to play such an integral role in the lives of many Tejanos is quite telling. Similarly, that a random sampling of Chicano/as would produce the Virgen as a consistent choice for a hero/heroine is a dramatic and illustrative example of the role of Catholicism in Chicano/a culture. Moreover, both the shrine and the survey's results evidence that the role of the Catholic Church in Chicano/a lives is not one that can be denied, ignored or glossed over, but must be one which is both recognized and directly addressed by LatCrit theory. To fail to do so would be disingenuous and irresponsible at the very least and revisionist history at its worst.

1. Differences in Chicano/as' Catholic Experience

Perhaps the best reflection on the reality of Chicana/os and Catholicism were comments made during LatCrit II by Associate Dean Jose Roberto Juarez, the first Mexican-American to hold the title of Associate Dean of Academic Affairs at St. Mary's University School of Law. Prior to his association with St. Mary's, Dean Juarez had a long and admirable history of vindicating civil rights for Latina/os, most recently as Employment Litigation Director for the Mexican American Legal Defense and Educational Fund. Dean Juarez noted that if the criticism of St. Mary's decision to infuse Catholicism into LatCrit II was in some way meant to suggest that LatCrit theory should either de-emphasize and/or ignore the importance of Catholicism in Chicana/o communities, then the conference attendees were dangerously close to losing a significant connection with Chicana/o culture, history and tradition. Dean Juarez eloquently stated that during his life's work pursing civil rights for Chicana/os, he had attended many, many marches, and could assure the conference attendees that La Virgen de Guadalupe was always at the front. n22 Sig [*459] nificantly, and perhaps surprisingly to some, it was La Virgen, and not a crucifix or other Christian image or symbol, that led all of those farmworker marches. This speaks to a qualitative and certainly cultural difference in which Mexican-Americans practice and experience Catholicism in the United States. n23

To understand and appreciate the historical role of Catholicism, and particularly the role of La Virgen, in Mexican and Mexican-American life is to recognize and appreciate much about contemporary Mexican-American culture and behavior. Furthermore, for many Chicano/as, religious life is often transformed into cultural practices with little thought. For instance, the time-honored tradition of compadres and comadres within Mexican-American culture is actually religiously-based insofar as it stems from relationships which are formed as a result of individuals' participation in religious ceremonies such as baptisms, quinceñaeras and weddings. n24 Yet, [*460] most Chicana/os I know give little, if any, thought to the fact that in utilizing and participating in the compadre/comadre institution, they are actually participating in and reinforcing a practice which has religious origins.

The prevalence of religious names within the Latina/o community is another example of this unconscious reinforcement of religion. Traditional Spanish names such as Maria, Guadalupe, Jesus, Jose and Pedro, are all biblical and thus religious in origin. Yet, these names when used in every day interaction, and particularly when translated/transformed into English (Mary, Lupe, Jesse, Joe and Peter), somehow lose their religious nature and become much more secular in tone.

2. The Religious Personal and the Secular Political

In addition to the melding of Chicano culture with Catholicism, the prevalence and dominance of the Catholic Church in Chicana/o lives also plays a much more direct role because it is often the source and basis for Chicano/as', particularly working class Chicano/as', political beliefs and actions. Accordingly, assuming the existence of a "Chicano view," and/or "Chicano/a voice," such a view or voice is certainly and understandably often influenced by the Church's teachings on various issues. It should not be surprising,
therefore, that Chicano/a views on various controversial topics ranging from abortion to the death penalty are often informed and influenced by, and thus strikingly similar to, the Church's teachings on these issues. For instance, with respect to the immigration debate, Kevin Johnson has postulated that "Catholicism, still the dominant religion among Latinos/as, may affect the community's collective view on immigration." n25 Similarly, Berta Esperanza Hernandez-Truyol has recognized that, "significantly, 85% of Latinos consider themselves Catholic, and many hold political and social views that are influenced by religious doctrine." n26

For many working class Chicano/as, therefore, the intersection of ethnicity, class and religion often results in and shapes political ideology. Moreover, it is these factors that determine many Chi[c]ano/as' life experiences, as they have in my own life. Paraphrasing from contemporary feminism, therefore, I would argue that for many Chicano/as, the religious personal is in many instances the equivalent of the secular political.

The Honorable Reynaldo G. Garza is a living testament to this reality. In 1961, Judge Garza became the first Mexican-American federal judge when he was appointed to the United States District Court for the Southern District of Texas. n27 In 1979, Judge Garza again made history by becoming the first Mexican-American appointed to a federal appeals court when he was elevated to the United States Court of Appeals for the Fifth Circuit. Significantly, a little known fact about Judge Garza is that he was offered, by President Jimmy Carter, and turned down the opportunity to serve as the first Mexican-American United States Attorney General.

Despite the significant age and generational disparities between Judge Garza and me, we still have much in common. Being born and raised Tejanos, he in deep South Texas and I in the Northern Texas panhandle, and separated by 50 years of age and experience, a full half-century, seems to have had little impact on the ways in which he and I were raised and the continuing importance and significance of Catholicism in our respective families. n28 For more than fifty years before my arrival on this earth, Judge Garza, a legal trailblazer for all Latina/os, has been a living example that for many Chicano/as, including lawyers and judges, the religious personal is indeed the secular political. n29

[*462] Assuming this assertion is both accurate and correct, an interesting issue which arises is the dominance of the Democratic party for the vast majority of Chicana/os who choose to identify with either party, and for those who choose to vote at all. For instance, John Hart Ely has noted, that "Latinos are notoriously divided politically, Mexican-Americans and Puerto Ricans voting heavily Democratic, Cuban-Americans still more heavily Republican." n30 Similarly, Rudolfo De La Garza and Louis DeSipio have noted that "majority Latino [electoral] districts are highly partisan. In Mexican American and Puerto Rican areas, the partisanship is Democratic; in Cuban areas, Republican." n31 Given that the Democratic party's position with respect to several issues is far more liberal than the Catholic Church's position, e.g. abortion, birth control - which way do Chicano/as choose to vote, assuming they vote at all, and what is the process they use for arriving at their decision - what factors are considered, how are they considered and why are they considered are all interesting questions worthy of further inquiry.

3. Catholicism, Sexism and Chicana/os

Understanding and appreciating the central and important role of Catholicism in Mexican-American identity for me also brings forth one of the most disturbing Pdoxes in contemporary Mexican-American existence - the prevalence of sexism in contemporary Chicano/a culture. n32 Given the enduring role of a prominent and [*463] much-revered holy woman such as La Virgen in many Mexican-American families, why is it that male machismo, and the consequent subordination of women, continues to be an issue in many Chicana/o lives? Martin Espada writes, ""'Macho,' as employed by Anglos, is a Spanish word that particularly seems to identify Latino male behavior as the very standard of sexism and violence." n33 Echoing this sentiment, Jenny Rivera has noted, ""'Macho' is the accepted - and expected - single-word description synonymous with Latino men and male culture." n34

In a recent book, Muy Macho: Latino Men Confront Their Manhood, n35 several Latino authors from various of the Latino subgroups write eloquently and revealingly about the role of machismo in their own lives. Throughout this collection of essays, particularly those from Chicano authors, there are numerous references to the role of the Church in Chicano/Latino male identity, but there is no serious examination of the Pdox of La Virgen and the continuing sexism in Chicano/a culture.

Equally as important as the Church, however, is the role of Chicano fathers. With respect to his father, Luis J. Rodriguez, a Chicano writes,

We never really communicated. We never shared intimate moments, or even the word love between us... The patriarchal Mexican culture had helped build a
wide breach between my father and me. The silent strong man - perhaps such a dichotomy could exist, but it also had vestiges of deceit - was revered. Waited on. Accepted. My grandfather drank his manhood away, beating up his wives, demeaning his children. My mother learned to hate, to talk a blue streak so she could defend herself. n36

[*464] Moreover, another important area of inquiry should be the extent to which Chicanas, without engaging in "blaming the victim," participate, either directly or inadvertently, in instilling and reinforcing mainstay principles of machismo. Rudulfo Anaya writes about this much-neglected reality:

Talking about being macho also means talking about the role of women in our lives. In a traditional setting, the Mexican mother raises the male child and has a great influence on the learned macho behavior of the child. We [Mexican men and boys] learn a lot about the sexual behavior from the males of the clan, but the mother, if she does the raising of the male child, is a most crucial ingredient in the evolving macho role. n37

In my own experience, for instance, certainly none of the Chicanas in my life ever suggested that beating, demeaning or otherwise subordinating women is appropriate behavior for Chicano men. Nonetheless, these same women were among the fiercest protectors and enforcers of gendered roles and mores, continually insisting on my strict compliance with certain facets of male machismo. In their presence, I was not allowed to cry or otherwise show emotional vulnerability, was to protect my sisters and female cousins at all costs, and was otherwise consistently reminded that my gender determined much of what would be permitted of me in terms of my actions and reactions to the world around me. Subsumed in all of this machismo socialization was a deeply ingrained and embedded presumption of heterosexuality. n38 Geoffrey Fox concludes that "machismo is widespread, shared and reinforced even by many women, especially mothers who insist that their sons do only 'manly' tasks and leave the household drudgery to their sisters." n39

The Pdox of La Virgen and persistent sexism in Chicana/o culture is an area ripe for further development in LatCrit theory. [*465] For instance, given the historical significance of La Virgen, a strong almost impenetrable role model, why is it that domestic violence exists within the Mexican-American community at all, and what is the best way for us as a community to address this issue? n40 Moreover, and more disturbingly, why is it that according to various studies, Mexican-American women are the least likely to view certain actions as constituting spousal abuse, and are the most likely never to have informed a friend, minister or social worker of the domestic violence prior to visiting a battered woman's shelter. n41 One set of researchers summarized the findings regarding Latinas and domestic violence in the following way:

The research on hispanics implies that hispanic women in shelters would tend to be the most disadvantaged economically, and be married longer and fewer times. The hispanic women are also more likely to tolerate more abuse, which would be reflected in less help seeking. When they did seek help, they would characteristically be more likely to call on police. n42

As a Chicano and legal academic, I find these questions intellectually perplexing, but more so extremely disturbing. While I was growing up I was never able to understand, and will never be able to understand, the persistence of domestic violence within my Chicano/a community. It bothers me, infuriates me and sickens me. Most of all, it saddens me that a community so grounded in religious faith could have such an un-Christian force play such a strong role in the lives of so many of its women. At the same time, however, I have to recall that the sexism inherent in the Catholic Church is certainly no glowing example of equality of treatment for women. As such, the Church more than likely often serves as reinforcement of rigid, traditional gendered role-playing within the greater Mexican American community. n43

[*466] Luis J. Rodriguez has written eloquently about male machismo and the ways in which Latino men can seek to address this issue:

I have to address an important aspect of men coming to terms with themselves, with their inner workings, their mistakes, their strengths, their vulnerabilities. And that is that no man can find his essence, can get a hold of his own true self, as long as he participates, whether willfully or not, in a world that is predicated on man's power over woman.

I may have achieved a level of peace within myself and with those I live with, but I was also capable of great destruction, including almost killing my first wife. We can't lie to ourselves. A free and spiritual man can never be a user or exploiter of women. For us, macho does not mean the bully, the jock, the knucklehead. He is warrior, protector, defender, and lover. He is artist, hero, father and elder. Nowhere does this imply or indicate a relation of superiority or strength over the only being that can define, limit, and even set him free: woman. This, I believe, must be
integral to any activity by men in finding themselves. n44

Latino men "finding themselves," as suggested by Luis Rodriguez, is crucial to finding an effective approach for dealing with the issue of domestic violence in the Latina/o community. LatCrit certainly has a role to play in this continuing search. First, in "finding themselves," LatCrit men can look within to see what, if any, sexist notions they hold and what, if any, sexist practices they engage in, and then ask whether and to what extent these beliefs and/or behaviors stem from religious training/indoctrination. Additionally, both LatCrit men and women can address the religious personal and secular political reality in their writings. Finally, LatCrit can ensure that its internal efforts to address and eradicate this plague are mirrored in the legal jurisprudence and efforts of other critical race theory movements.

II. LatCrit II and the Host School

Having discussed the strong influence of Catholicism in Mexican-American culture, I would now like to address the way in which the issue of religion arose at LatCrit II. St. Mary's University School of Law was the official host school for LatCrit II. n45 The University and the Law School are both situated in a working class Mexican-American barrio. Given that the controversial aspect of LatCrit II turned out to be the role of religion in Latina/o communities, a more appropriate location for the conversation could not exist.

As the St. Mary's members of the Planning Committee proceeded to tend to the conference's final details, we determined that given our shared enthusiasm and support for the Law School's recent emerging and developing Catholic character and image, n46 we would seek to share some of what makes St. Mary's special to us with the attendees throughout the conference weekend. Toward this end, we decided to inject a small part of St. Mary's "magic" into the LatCrit II program, particularly emphasizing the work of the Law School's clinics. n47 Much to my and my St. Mary's colleagues' surprise, however, it was this very decision which resulted in a spontaneous, tumultuous and difficult conversation during the Satur [*468] day morning panel at LatCrit II, which Professor Nancy K. Ota has described as "four hours in sometimes heated debate over the role of religion" and "a ranging and emotionally charged discussion illustrative of the complications of the politics of identity." n48 Much of the conversation centered on the historical oppression which the Church has practiced against gays, lesbians and transgendered people. That this issue was a major component of the Saturday discussion was quite ironic given the Law School's recent history with respect to issues of sexual orientation. n49

[*469] As I stated at the Saturday discussion and will reiterate here, I was the one who made the unilateral decision to ask Sister Grace, the Law School's campus minister, to give the dinner blessing at the conference's first dinner - a decision which spawned a great deal of controversy unbeknownst to me until the Saturday morning discussion - and I make no apologies for this or any other of my or my colleagues' decisions regarding the infusion of Catholicism at LatCrit II. St. Mary's is a Catholic law school and from my vantage point, all that we did as the host school at LatCrit II was to behave as a Catholic institution. n50 To have this choice criticized by self-professed progressives who claim to advocate inclusion and tolerance for all, seemed to me the time of the actual discussion, at best a little disingenuous to me and at worst exceedingly hypocritical. Nonetheless, I do want to make it clear that neither I nor my St. Mary's colleagues ever purposefully set out to offend, marginalize or otherwise discomfort anyone. In fact, the following evening I asked one of the other conference attendees, a Native American, to give a Native American blessing at dinner, and he did. n51 Moreover, [*470] while I did not assume that everyone would agree with or even like the Catholic culture which I and my other St. Mary's colleagues were attempting to share, I did expect that this culture, or any other which was introduced during the course of the conference, would at least be respected.

A. Being an "Out" Catholic

Given the Law School's rich and recent history as outlined above, I was quite proud and happy that I had joined the Law School faculty. As I often explained to my new colleagues, for me this association was good because at long last I was able to be an "out" n52 Catholic. No longer did I have to conceal my religious identification at work. No longer did I have to make apologies or justify my joy and enthusiasm for my deeply held spiritual and religious beliefs. No longer did I have to worry about my comments in class regarding religion as I had worried when I taught as an adjunct professor at a public law school while I was in practice. No longer did I have to worry about being wary of having religious symbols in my office. No longer did I have to worry about excusing myself from work for a few hours on Sundays so that I could attend mass. n53 Accordingly, when the criticism of St. Mary's interjection of religion into various aspects of LatCrit II began, I felt as though my school and I
were being criticized for being "out" about our Catholicism.

I discussed the following analogy with a fellow conference attendee. Assume a lesbian attendee at LatCrit II had presented a poem in which she alluded to holding her lover, and which further described her intimate feelings regarding the relationship. Assume further that someone in the LatCrit II audience had objected that the content of the poem was bothersome to him or her and his or her morals. To me, there is no doubt that the vast majority of individuals in attendance at the Saturday discussion would have quickly (and rightfully in my opinion) responded to the objection by pleading for the objector's tolerance with respect to the presenter's right to speak. The plea would not have been for the objector to accept and/or like or enjoy what he or she was listening to, but rather merely that the objector be tolerant and respectful of another's right to speak and experience his or her own reality and complexity. In other words, I believe people would have, and should have, requested that such an objector allow the individual to be "out" with respect to her feelings, experiences and beliefs.

In my mind, we as a Catholic law school attempting to be "out" about our Catholicism were not similarly supported, but rather criticized for our actions - not by all, but at least by some in attendance at LatCrit II. Again, in my mind, all that we at St. Mary's did at LatCrit II was to behave as a Catholic institution.

B. Professor Ota's Experiences at and Important Contributions to LatCrit II

In her symposium essay, Professor Ota highlights and reiterates many of the points regarding sexual orientation and the Catholic Church which were raised during the Saturday discussion. While Professor Ota acknowledges "the contributions which the Catholic Church makes to various liberatory movements, to individual spirituality, and to building community," she also asserts that, "blithe incorporation of Catholic tradition in a LatCrit conference raises a few questions" which she suggests should be further explored. At a later point, Professor Ota returns to one of her basic themes with which I wholeheartedly agree: "While LatCrit Theory must deal with Catholicism's prevalence, the general presumption of a Latina/o religious homogeneity around Catholic tradition is faulty." It is on this specific point that I am now better able to appreciate Professor Ota's position and statements at LatCrit II and her subsequent writings on her experience.

Interestingly, however, I believe that unbeknownst to either of us, our positions may actually have more in common than not. As a preliminary matter, I am in complete agreement that the Catholic Church has a less than pristine history. Furthermore, I specifically agree with Professor Ota's assertions that "the general presumption of a Latina/o religious homogeneity around Catholic tradition is faulty." Understanding her position better helps me to understand that in our enthusiasm to share some of St. Mary's with the conference attendees, my colleagues and I may have left a wrong and inaccurate impression. While we viewed this interjection of religion as stemming solely from the host school - a Catholic law school - wanting to share some of its culture with the conference attendees, for others this interjection of religion may have appeared as an unconscious and perhaps careless equating of Latina/o identity with Catholicism or as a presumption of sameness of experience and tradition with respect to religion for all Latina/os. Nothing could be further from the truth. As outlined above, our decision had nothing to do with supposed or a presumed homogeneity of religion within the Latina/o community by the St. Mary's planners. Rather, the decision had everything to do with a desire to continue the school's somewhat recent efforts of identifying and being identified more closely with the Catholic Church, and more specifically, a Catholicism which is far more inclusive and far more tolerant than many may have ever believed possible for a Catholic institution.

While I understand and cannot deny other people's reality that the Catholic Church has engaged in historical as well as contemporary oppression and repression against certain groups, which has oftentimes translated into significant individual and personal struggles for various peoples, including myself, the Catholic Church has also served a significant, important and constructive role in the lives of many others, again including myself. And, I would like to suggest that considering all practicing Catholics as a monolithic group is as unfair and as dangerous as considering all gays and lesbians, all African Americans, all Asian-Americans, all Native Americans or all Latina/os as monolithic groups. There is great danger in engaging in reductionist simplification.

Thus, rather than being associated with the Catholic Church's historical repression, oppression, violence, homophobia and sexism, I prefer to be identified with the Law School's Center and clinics which just last week gave hope and support to many of San Antonio's less fortunate citizens, irrespective of race, gender, ethnic origin, or sexual orientation.
actions in my quest for and pursuit of social justice. As concluded by the National Conference of Catholic Bishops, "respecting and responding to the cultural and ethnic diversity of the communities we serve is an expression of justice." n59

III. Epilogue

LatCrit II took place in early May, 1997. Oddly enough by October of 1997 some of the very issues regarding Latina/os and religious identity which had been discussed in a scholarly and intellectual, if not controversial, manner at LatCrit II, and which I have discussed in this work, came to life in a very real and personal way for me. As previously stated, under Dean Aldave's leadership the Law School had historically excluded the United States military from utilizing the school's career services offices for recruitment purposes, due to the military's refusal to sign the Law School's policy of non-discrimination on the basis of, inter alia, sexual orientation. The Law School's policy was in line with the Association of American Law School's (AALS) Bylaw 6.4 and Executive Committee Regulation 6.19. Recently, however, the Department of Defense began threatening St. Mary's and other law schools which were excluded the military from on-campus recruitment with loss of federal funds, pursuant to the provisions of the so-called "Solomon Amendment." Because this issue was not limited to St. Mary's, the AALS was forced to adjust its position regarding the military's discrimination on the basis of sexual orientation. In short, by Memorandum 97-46, dated August 13, 1997, n60 the AALS notified all member and fee-paid schools that compliance with Bylaw 6-4 and Executive Committee Regulation 6.19 would be excused for each law school, with respect to military recruiters only, until such time as the Solomon Amendment was no longer in effect. Additionally, however, excused non-compliance with these two AALS requirements was contingent on the law school further demonstrating to the satisfaction of the AALS that the particular law school was taking some "amelioration" in a form that both expresses publicly the law school's disapproval of the discrimination against gays and lesbians by the military and provides a safe and protective atmosphere for gay and lesbian students." n61

In response to the threatened loss of funds, Dean Aldave, against her wishes but because of University directives, was forced to abandon the Law School's policy of military exclusion for recruitment purposes. In accordance with the AALS requirements, however, the Law School took several steps to ameliorate the effect of allowing the military access to our career services offices. One of these was to sponsor a school-wide program regarding the military's "don't ask, don't tell" policy which was the underlying basis for the controversy. In connection with the program, and the impending presence of the military on campus, the Law School's gay and lesbian student group solicited the support of the various other campus student groups in its efforts to take public position's against the military's "don't ask, don't tell" policy.

Because I was on a visitorship away from the Law School during the Fall 1997 semester, I was not aware of this activity until late one afternoon in October when I received a panicked phone call from the President of the Law School's Hispanic Law Students Association (HLSA). The President informed me that HLSA's support had been sought by the gay and lesbian student organization, but that the issue had created a great deal of controversy not only within the greater HLSA body, but particularly among its five officers, two of whom were adamantly opposed to HLSA providing its support and three of whom were in favor. n62 The HLSA President, who was calling me because I was an official HLSA Faculty Advisor, informed me that she did not know what to do. Should she submit the issue to the body as a whole (and risk a negative vote) or take the divided officer vote as her license as President to proceed accordingly to support the gay and lesbian students?

Upon learning of this controversy, my first reaction was to ask, "What's the question?" Of course our organization, made up almost entirely of historically oppressed individuals, and in existence for the purposes of fighting historical oppression against an ethnic minority, would stand in solidarity with another organization in condemning other types of similarly groundless oppression and repression. However, I would soon find out that what was so crystal clear to me was not so clear to some HLSA members.

Following this phone call, the other official Faculty Advisor for the group and I - along with another Chicano faculty member and a Latina administrator - scheduled a meeting with the five officers regarding this issue. Prior to the meeting, I drafted and circulated a letter to the five student officers and copied all of the Law School's Hispanic faculty and administrators. In this letter, I made my own position quite clear:

My own personal and professional position on this matter is quite simple: either we as an organization are committed to the principle of non-discrimination or we are not. In my personal capacity, I have worked too long and too hard to assure non-discrimination against Hispanics only to have a Hispanic organization, in turn, determine that discrimination against other groups is okay, or alternatively, abstain altogether from
the issue - hereby resulting in a silence which is deafening. n63

I further informed the HLSA officers that if they or the body as a whole chose not to support the gay and lesbian student organization, then I had no choice but to ask the Dean to accept my resignation as an official HLSA Faculty Advisor. I could not in good conscience continue in this capacity.

The meeting was quite lengthy and filled with heightened anxiety and emotions from both the faculty and the students. One of the most interesting arguments made at the meeting, and by subsequent students who later telephoned me, was that for many of the HLSA members, their position against supporting the gay and lesbian student organization was a religiously, particularly Catholic, based decision. It was interesting to me that what these students seemed to be suggesting was that their intolerance of another group's rights was essentially religiously based - s if that somehow excused or justified the intolerance altogether. For me, this was a prime example of the religious personal manifesting itself as the secular political for several members of the predominantly Mexican-American HLSA organization.

This intolerance for issues of sexual orientation among Hispanics was not new to me. Throughout my life, my Chicano/a community experience was one laden with extreme homophobia. Indeed, Ilan Stavans has noted, Among Hispanics, homosexuals are the target of nightwell insurmountable animosity. If the Latin phallus is adored in heterosexual relations, it is perceived as wild, diabolic, and uncontrollable for homosexuals... Hispanic gays remain a target of mockery and derision, forced to live on the fringes of society. To be gay is to be a freak, mentally ill... n64

However, as I pointed out to the HLSA officers in my letter, a religiously based intolerance is not an acceptable rationalization, given Section 2358 of the Catechism: "If our [Hispanic] cultural homophobia stems from the supposed Catholic teaching on the matter, then this position, too, is a weak one given that the new Catechism specifically provides that, "Every sign of unjust discrimination in their [gays and lesbians] regard should be avoided.″ n65

Moreover, the HLSA students who were adamantly opposed to supporting the gay and lesbian student organization were also missing a very significant point: the two groups were not mutually exclusive. Hispanics are quite capable of being gay or lesbian, and certainly lesbians and gays are quite capable of being - and actually are - Hispanic. One of the lesbian Hispanic students confided in me that as she sat in the HLSA meeting during which the issue was discussed, she felt as if she were invisible: Hispanic students were behaving and discussing the issue as if Hispanics could not also be gay, and treating the two groups as mutually exclusive. This lack of recognition and acknowledgment created a great deal of inner conflict for this Latina lesbian. n66

Throughout this ordeal, the irony of this situation, given the struggles and discussions that took place at LatCrit II regarding the role of religion in Latina/o lives, kept resurfacing for me. In a very disturbing manner, this episode greatly reinforced my strong beliefs regarding the continuing importance of Catholicism for Mexican-Americans in the Southwest United States. Moreover, this episode also reinforced my belief that if movements, such as LatCrit and the Catholic social justice movement practiced at St. Mary's, are to realize their full potential, then they must speak directly to, and not past, as well as work with each other. Furthermore, my ordeal with the St. Mary's HLSA students, while certainly difficult, nevertheless provides an excellent example of ways in which old stereotypes of Catholicism can be addressed using legitimate modern teachings of the Church - such as the new Catechism and the recent pastoral letters from the National Conference of Catholic Bishops - in order to help Chicano/as and others understand that to be Catholic does not necessarily mean that one is intolerant. There is hope, but this hope is meaningless unless it produces results. Thus, both LatCrit and its Catholic participants must assure that the dialogue continues.

FOOTNOTE-1:

n1. "Morales 1987" is the only identifying information which the artist chose to place on the work.
n2. For a more thorough discussion of the role of the Virgin Mary in Mexican-American culture, see infra Parts I.A.1-3 and accompanying notes.
n3. The terms "cholo" and "pachuco" are Spanish slang terms used to identify what can best be described as young Mexican-American males who engage in an anti-establishment lifestyle and culture within the Mexican-American community. See generally Rudulfo Anaya, "I'm the King": The Macho Image, and Jack Lopez, Of Cholos and Surfers, in Muy Macho: Latino Men Confront Their Manhood 57-73, 91-
n4. A few Latinas and almost all of the Anglo students in my graduating class have succeeded in obtaining a college degree.

n5. I use the term "Chicana/os" to refer to and as synonymous with "Mexican-Americans," who are the largest of the Latina/o subgroups.

n6. As a member of the committee that planned and organized LatCrit II (the "Planning Committee"), I was one of several individuals from law schools around the country, including the host school - St. Mary's University School of Law in San Antonio, Texas. In addition to being a member of the Planning Committee, I also served as St. Mary's "point" person for the event. It was in this capacity that I, in connection and cooperation with other members of the Planning Committee from St. Mary's, coordinated and handled much of the conference's final details. As the point person for St. Mary's, I made several last minute decisions on my own. It was to my great surprise, therefore, as well as that of the other St. Mary's planners, when our last-minute decisions to infuse some of Catholicism into LatCrit II proved to be quite controversial at the actual conference. As explained more fully in Part II of this piece, I continue to stand behind the decisions that my St. Mary's colleagues and I made and welcome this opportunity to explain our decisions further. I also welcome the opportunity to contribute to and further what is an interesting and, in my opinion, a much-needed dialogue about the role of religion in Latina/o communities.


n10. Id. Because of the significant relationship between U.S. Hispanics and the Catholic Church, at a recent meeting the nation's 300 Catholic bishops determined that the Church would take two steps in the hope that these steps "will bring Spanish-speaking American Catholics into the church's mainstream." These two steps include convening a gathering of 5,000 Hispanics in three years, and approving the first American version of a Spanish-language liturgy. Id.


n13. See William C. McCready, Culture and Religion, in Hispanics in the United States: A New Social Agenda 52, 55 (Pastora San Juan Cafferty & William C. McCready eds., 1985) ("Although Hispanics are perceived as predominantly Catholic in terms of their religion, this perception needs to be examined as it applies to different groups in different locales... As far as Mexican religious experiences and preferences are known, it appears that although there has been a good deal of proselytizing among Mexicans in specific geographic areas by Protestant sects, the impact of such activity has been minimal.") (emphasis added) (citations omitted).

n14. This statement should not be misunderstood as a comment about the role of Jesus Christ within the Chicano/a Catholic community. Chicanos certainly adhere to traditional Christian beliefs regarding Jesus' role as Lord and Savior. In addition, however, and for largely historical reasons, the Virgin Mary has come to play a very strong and central role...
within Mexican and Mexican American Catholicism. For a brief history of the origins and importance of the Virgin Mary in Mexican culture, see Anaya, supra note 3, at 72-73.

n15. My paternal grandparents were not much different than my maternal grandparents, save for the fact that they were born in the U.S. My father's mother died when he was 8 years old in a house fire that also killed two of my father's other siblings. My grandfather later remarried a woman who had her own children. Including my grandfather's six children, his new wife's existing children, and the children that this new union brought about, my father has sixteen brothers and sisters.

n16. When I was in law school, one of my Chicano classmates who is also from Texas and my age, stated that at the time that we were growing up, most Mexican-American households in Texas had two standard images in their home: one was a picture of President John F. Kennedy, the other was the Virgin Mary. I recall thinking about how accurate his observations were with respect to my own upbringing.

n17. Mercedes Olivera, Virgin of Guadalupe Firm on Ancient Foundation, Dallas Morning News, Dec. 10, 1997, at 38A (describing a mural painting program in Dallas for high school students from single-parent homes and quoting the program's director as stating that Mexican American students "always pick something religious and it's usually the Virgen.")

n18. Tom Fatherrer, San Juan: Up From the Ashes, McAllen Monitor, Oct. 23, 1992, at 1A (noting that at the time of its dedication in May 1954, "an estimated 15,000 people weekly made pilgrimages to the shrine" and concluding, "it was, and still is, the religious showpiece of South Texas." See generally The History of the San Juan del Valle Shrine (pamphlet produced by the Shrine, on file with author); Thousands See Ruins of Church, McAllen Monitor, Oct. 25, 1970, at A1.

n19. Jose Antonio Burciaga, Cinco de Mayo - Some Uncommon Heroes for a Day Commemorating Heroism, L.A. Times, May 5, 1988, at B2. As explained by Burciaga, "the selection process brought into question the very definition of a hero or heroine as a mythical, historical, symbolic, military or popular culture figure." Id.

n20. Id.

n21. Id. (emphasis added).

n22. Dean Juarez has subsequently expounded upon his experience at LatCrit II:

For legal academics who seek to empower Hispanics, it is essential that we work to see the same power in those religious symbols that a majority of Hispanics do. To fail to do so is to engage in the kind of elitism that critical race theorists purport to reject. Religion, and particularly Catholicism, is an integral part of the Hispanic community and of the Hispanic story. To exclude religion is to fail to give voice to the very community the LatCrit participants seek to empower. At best, to fail to include religion is a strategic error because it fails to utilize a potentially powerful source of support. At worst, to exclude religion risks making the legal academy irrelevant to the population we purport to want to empower.


n23. See generally, McCready, supra note 13. Another example of Mexican-American Catholicism being culturally different from mainstream Catholicism in the United States is the Mexican-American wedding. A typical Mexican-American wedding will have several padrinos and madrinas, often many times more than the typical American equivalent of bridesmaids and ushers. These padrinos and madrinas are members of the wedding party, but also help to pay for the costs of the wedding. In this respect, padrinos and madrinas are essentially wedding sponsors. Serving as the first padrino/madrina couple for the bride and groom is generally a high honor often reserved for a favorite aunt.
and uncle of the marrying couple. In addition to padrinos and madrinas, the Mexican-American Catholic wedding is also full of other traditions and customs such as the lasso, the dimes and the ever-popular "dollar dance" at the reception.

The reality that Mexican-Americans practice and experience a distinct form of Catholicism does not mean, however, that such customs or cultural differences split or somehow fragment the Church. Rather, as recognized by the National Conference of Catholic Bishops, parishes are called to be communities of solidarity. Catholic social teaching more than anything else insists that we are one family; it calls us to overcome barriers of race, religion, ethnicity, gender, economic status, and nationality. We are one in Christ Jesus (cf. Gal. 3:28) - beyond our differences and boundaries... We are a very diverse community of faith - racially, ethnically, economically, and ideologically. This diversity should be respected, reflected, and celebrated in our social ministry.


n24. Geoffrey Fox has described these relationships as "ritual bonds" which are "semisacred ties between the parent and godparent of a child." Geoffrey Fox, Hispanic Nation 82-83 (1996). However, these compadre/comadre relationships are not limited to only parent and godparent, but extend to other relationships formed in connection with religious activities. One commentator has noted that for Latino/as, "Familia extends beyond blood ties to the special friendships between adults, ritually cemented through compadrazgo, which roughly translates as godparenting. Comadres and compadres become bonded to, and to an extent, responsible for the needs of an entire family - particularly to those of the parents of the same sex. They thus exceed the majority's concept of the godparenting role." Note, Into the Mouths of Babes: La Familia Latina and Federal Funded Child Welfare, 105 Harv. L. Rev. 1319, 1322-23 (1992).


n28. Louise Ann Fisch relates,

A more formally religious man would have been hard to find. Garza not only attended Mass daily, but when faced with a difficult sentence, he would find solace in prayer. He befriended many South Texas priests, who became his confidantes and spiritual advisors. When he delivered an especially severe sentence, he found comfort in religious doctrine. Theology interested Garza immensely, and he had known the Bible well since childhood. He often used religious references when discussing cases with his clerks, but he never forgot that his task on the bench was to follow Constitutional, rather than biblical, precepts. He prayed daily for divine guidance and was well aware of his responsibility to balance the scales of justice, striving for fair sentencing as dictated by law. He often arranged religious retreats for attorneys in South Texas in an effort to remain involved in religious affairs. In this manner he maintained the strong faith of his Mexican roots while following the precepts of the American judicial system.

Id. at 109.

n29. The work of Juan Perea and Gary C. Furst regarding race-neutral reasons for disqualifying jurors under a Batson challenge is another example of the way in which a Chicano/as' personal religious
beliefs can have very secular political ramifications. Gary C. Furst, Will the Religious Freedom Restoration Act Be Strike Three Against Peremptory Challenges?, 30 Val. U. L. Rev. 701, 717 n.84 (1996) ("Depending upon the size of the Latino population in a jurisdiction and the number of peremptory challenges that litigants are given, if a court were to allow Catholicism to serve as a race-neutral justification for peremptory challenges, many Latinos could be excluded from jury service.") (citations omitted); see also Perea, supra note 8, at 18 ("Catholicism, like language, is an inherent part of Latino ethnicity. Catholicism, therefore, can function as a close proxy for Latino ethnicity and should not be considered a neutral reason for excluding a juror.") (citations omitted).


n32. Judge Reynaldo G. Garza's own family is typical of the division of roles for many Mexican American parents.

The Garza family organization, which existed along patriarchal lines, reflected a Mexican cultural pattern that mirrored American culture. Like most Mexican American and American families, the father personified authority... Conversely, Zoila [Judge Garza's mother] assumed the traditional Mexican mother's role of the sympathizer. The children regarded Zoila as a saintly, patient woman who showered them with affection. Since religion was the core of Zoila's existence, she was a deeply spiritual woman who saw in her Catholic faith the answers to any contemporary problem. She kept a Bible close to her side and adorned her home with spiritual symbols. She was a conservative woman, who always wore her coal black hair back with a small wooden barrette and refrained from using cosmetics. Most of Zoila's energies were concentrated on her children and her husband.

Fisch, supra note 27, at 9

n33. Martin Espada, The Puerto Rican Dummy and the Merciful Son, in Muy Macho, supra note 3, at 87. But, concludes Espada, "while Latino male behavior is, indeed, all too often sexist and violent, Latino males in this country are in fact no worse in that regard than their Anglo counterparts. Arguably, European and European-American males have set the world standard for violence in the twentieth century, from the Holocaust to Hiroshima to Vietnam." Id. at 88.

n34. Jenny Rivera, Domestic Violence Against Latinas By Latino Males: An Analysis of Race, National Origin, and Gender Differentials, 14 B.C. Third World L.J. 231, 240 (1994). A corollary to machismo is marianismo. Berta Esperanza Hernandez-Truyol notes, "The Latina identity is developed in the context of the "ideal woman' fabricated in the mold of the Virgin Mary, a construct called marianismo that "glorifies [Latinas] as strong, long-suffering women who have endured and kept Latino culture and the family intact."" Hernandez-Truyol, supra note 26, at 915 (citations omitted). After expounding further upon the concept of marianismo, Hernandez concludes, "in sum, the Latina is supposed to be a self-sacrificing, virgin mother, a saint, superhuman. She is deemed a failure, however, if in her humanness she fails by falling short of this super- and suprahuman religious ideal." Id. at 916. For an example of marianismo in Judge Garza's life, see supra note 32.

n35. Muy Macho, supra note 3.

n36. Luis J. Rodriguez, On Macho, in Muy Macho, supra note 3, at 196. Ray Gonzalez, another Chicano contributor, amplifies this point:

Despite honest attempts by many males to come to terms with the kind of men they had for fathers, we don't completely understand why so many of us are blocked from having good relationships with them. We can go as far as to say it is not our fault
our fathers were screwed up and had lived very different lives than our own. As young men, their values were different and family roles were not what they are today. We could point out certain events in our parents' lives that affected us as kids, but we could not completely understand why it was so damn hard to reach out to the male parent and pay such a high cost for doing it.

Ray Gonzalez, My Literary Fathers, in Muy Macho, supra note 3, at 178.

n37. Anaya, supra note 3, at 67.

n38. For a more thorough discussion of sexual orientation and Mexican-Americans, see infra Part III.

n39. Fox, supra at note 24, at 230-31. In his essay, Ilan Stavans, a Mexican contributor to Muy Macho, captures the essence of this mentality with respect to many Mexican American families and the issue of sex: "The Hispanic family encourages a double standard. Few societies prize female virginity with the conviction that we do. But while virginity is a prerequisite for a woman's safe arrival at the wedding canopy, men are encouraged to fool around, to test the waters, to partake of the pleasures of the flesh." Ilan Stavans, The Latin Phallus, in Muy Macho, supra note 3, at 150.

n40. Rivera, supra note 34, at 240.

n41. Although scant, data from various social science studies has determined that Latinas do indeed experience domestic violence qualitatively, and in some instances quantitatively, different from their non-Latina counterparts. See, e.g., Edward W. Gondolf, et al., Racial Differences Among Shelter Residents: A Comparison of Anglo, Black, and Hispanic Battered Women, 3 J. Fam. Violence 39, 44 (1988) (concluding that Latinas are the least likely of all groups "to contact a friend, minister, or social service, [thereby] suggesting their relative social isolation"); see also Sara Torres, A ComPtive Analysis of Wife Abuse Among Anglo-American and Mexican-American Battered Women: Attitudes, Nature and Severity, Frequency and Response to the Abuse 6 (1986) (unpublished Ph.D. dissertation, University of Texas) (on file with author). In her study, Dr.Torres found that, having decided to make contact, "Anglo-Americans contacted their relatives and a shelter for battered women for assistance. Mexican-Americans contacted the police, friends and relatives for assistance." Id. at 150. Dr. Torres also found that Mexican-American women had a much more tolerant view of what constitutes domestic violence. Id. at 93, 104.

n42. Gondolf, supra note 41, at 40 (citations omitted).

n43. See generally Ada Maria Isasi-Diaz & Yolanda Tarango, Hispanic Women: Prophetic Voice in the Church: Toward a Hispanic Women's Liberation Theology (1988).

n44. Rodriguez, supra note 36, at 201.


n46. Despite the University's history, until recently the Law School was not particularly Catholic in either tone or practice. With the arrival of Dean Barbara Bader Aldave in 1989, a Catholic and the first and only woman dean of a Texas law school, and several of the faculty hired under her, the Law School has attempted, in a progressive manner, to identify itself and its work more closely with the Catholic Church and its teachings. Indeed, as noted by one commentator, Dean Aldave "is the only dean to base her law school's mission on the life of Mary, mother of Jesus." Robert Elder, Jr., St. Mary's Clinics Continue City's Activist Traditions, Texas Lawyer, May 27, 1996, at 20. Dean Aldave's efforts to redefine and refocus the Law School and its Mission have not been without controversy. From her decision to establish legal clinics to her decision to increase racial minorities among the student body, Dean Aldave's reign at the head of the Law School has been tumultuous at best. See id.; Bob Elder, In the Spirit of St. Mary: San Antonio Law School Dean a Progressive Voice in the Legal Wilderness, Tex. Observer, June 14, 1996. In addition to
establishing clinics and enlarging the curriculum, Dean Aldave's other controversial, so-called "liberal" actions include diversifying the student body and faculty, so much so, in fact, that St. Mary's now has more Mexican American students and law professors than any other law school in the country. For a more complete treatment of all of Dean Aldave's many accomplishments during her nine year tenure at the law school, see Report to Rev. John M. Moder, President St. Mary's University School of Law (on file with author). For Dean Aldave's own philosophy and defense of her actions, see Barbara Bader Aldave, The Reality of a Catholic Law School, 78 Marq. L. Rev. 291, 294-95 (1995) ("We at St. Mary's University School of Law are virtually obliged to sponsor the particular clinical programs that we have initiated, I aver. After all, for whom is our school named?... Somehow I have to believe that such a woman [St. Mary], whom I view as a strong and courageous figure, would heartily approve of programs - instituted at the only law school bearing her name - that are designed to aid the poor and the homeless, immigrants and refugees, the young and the elderly, and inhabitants of death row.") Another of my St. Mary's colleagues, Professor Emily Hartigan, has also written about the Law School's developments under Dean Aldave. See Emily Fowler Hartigan, Practicing and Professing Spirit in Law, 27 Tex. Tech L. Rev. 1165, 1173-75 (1996).

n47. In a completely unilateral action, for instance, I decided to ask the Law School's Campus Minister, Sister Grace Walle, to give a blessing at the conference's opening dinner on Thursday night. My St. Mary's colleagues and I also decided to present some of the conference speakers with religious art work produced by one of the Marianist Brothers associated with the University. Finally, it was determined that while some of the conference's meetings would take place at the conference hotel, the Saturday meetings which were scheduled to take place at the Law School's Center for Legal and Social Justice, which houses the Law School's five clinics, would provide an excellent opportunity to share aspects of our St. Mary's community and Catholic culture with those who may not be familiar with the Law School, the clinics or their important work.

n48. Ota, supra note 7, at 437, 439.

n49. When I arrived on the campus of the Law School in the Fall of 1996 ready to begin full-time teaching, I had many of the same preconceived notions that many people in contemporary society may have regarding a Catholic law school. While I was raised Catholic and certainly considered myself a practicing Catholic, I nevertheless knew that there were many beliefs that I did not share with the Catholic Church. In fact, my best friend and I had recently had a discussion regarding whether we could still consider ourselves Catholic given our differences with the Church's teachings. My position was, and continues to be the following: for me the Catholic Church stands for hundreds of thousands of different principles and the fact that I may differ with the Church on five or six major points does not mean that I can no longer consider myself Catholic. However, rather than simply picking and choosing my Catholicism, I do attempt to adhere to as many of the Church's teachings as possible while at the same time working within the institution to change those five or six that I do not support. In doing so, I am mindful of the National Conference of Catholic Bishops' admonition that, "We need to make sure our faith shapes our political action, not the other way around. We cannot forget that we pursue the kingdom of God, not some earthly vision or ideological cause." Salt and Light, supra note 23, at 14. With this ambivalence, therefore, I arrived at my new job.

I still recall vividly that the first agenda item at my first St. Mary's faculty meeting was whether to approve the establishment of a gay and lesbian law student organization. St. Mary's being a Catholic law school, I expected there would be great debate over this issue. To my surprise, there was none, and the motion passed by an overwhelming majority of the faculty vote. As I understand it, the lack of debate over this issue may have been because the year prior to my arrival the proposal had been considered at length and many of the...
objections had been adequately addressed by the Catholics on the faculty to the satisfaction of those concerned about the issue, in part, by referencing Section 2358 of the Catechism of the Catholic Church which provides:

The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided.


Moreover, although not issued at the time of the vote at issue here, The National Conference of Catholic Bishops has recently issued a pastoral letter urging parents of gay and lesbian children to accept and love their children. National Conference of Catholic Bishops Committee on Marriage and Family, Always Our Children: A Pastoral Message to Parents of Homosexual Children and Suggestions for Pastoral Ministries, Oct. 1, 1997.

In the end, this position proved victorious, and the law student organization was allowed to form. Interestingly, at the same time that St. Mary's, which is headed by a Marianist priest, approved the establishment of a gay and lesbian law student organization, another Catholic university in San Antonio, which is headed by a lay person, denied approval of a similar student organization on its campus. Ken Dilanian, Gay Group Seeks IWC Recognition, San Antonio Express-News, Nov. 10, 1995. In denying the group official status the president of the university stated, "if the students want to petition the pope in Rome, they're welcome to." Id.

In addition to approving a gay and lesbian law student organization, however, the Law School has also been supportive of gay and lesbian students and community members in other ways. For instance, until the recent passage of the so-called "Soloman Amendment," the Law School under Dean Aldave's leadership had not permitted the U.S. military to participate in on-campus recruiting. This prohibition was necessitated because the military refused to be a signatory to the Law School's policy of non-discrimination, a policy which was in accordance with a long-standing policy of the Association of American Law Schools, but which few other law schools had actually enforced. Additionally, the Law School has also purchased a table for students and faculty at the annual Black Tie Dinner, an AIDS fundraiser, held by the local chapter of the Human Rights Campaign, a national gay and lesbian organization. Perhaps the best and most-widely attended school-wide function has been a panel presentation that the gay and lesbian law student organization sponsored regarding same-sex marriage and the various legal issues involved in the debate. The Law School has also offered courses which, in part, explore legal issues relating to sexual orientation. Finally, the Law School's clinics have represented gay, lesbian and transgendered clients in various cases, many involving situations, such as petitions for political asylum, where the client's sexual orientation is the primary focus of his or her legal problem or problems.

I outline all of this activity with respect to the Law School's interaction with and support for the gay and lesbian students and community members not to justify or somehow defend the Law School or its actions at LatCrit II - I do not believe such a defense or justification is either necessary or warranted - but rather to provide the reader with a more accurate and thorough contextual setting in which the reader may better understand why we at St.Mary's were so surprised by the tone and content of the Saturday conversation.

n50. These actions, which were typical of our daily practices, are in line with the declarations from the National Conference of Catholic Bishops:

A parish cannot really proclaim the gospel if its message is not reflected in its own community... The Church teaches that social justice is an integral part of evangelization, a constitutive dimension of
preaching the gospel, and an essential part of the Church's mission. The links between justice and evangelization are strong and vital. We cannot proclaim a gospel we do not live...

Salt and Light, supra note 23, at 3 (emphasis added).

n51. Several of the conference attendees had not attended the prior evening's dinner and were thus unaware of the second evening's non-Christian dinner blessing. Accordingly, the criticisms of the Saturday conversation which emphasized the Christian interjections completely failed to account for the fact that LatCrit II had, in fact, included other forms of non-Christian prayer and reflection during the conference.

n52. While obviously a borrowed term from the lesbian, gay and transgendered community, I use the term "out" here as a close, but admittedly faulty and inapproximate, analogy. I believe that, with perhaps a few isolated exceptions, the ramifications for choosing to live one's life as an "out" Catholic can never be as grave as those associated with being an "out" gay, lesbian, or transgendered individual in contemporary American society. Recognizing this reality, however, I can still state that I most certainly have experienced a good amount of discrimination and marginalization, particularly among educated intellectuals, for my decision to live my life openly as a practicing Catholic. My St. Mary's colleague, Professor Emily Hartigan, has described this phenomenon accurately as a "taboo against religious speech in public, in the academy" and noted that "in legal scholarship, [she] was considered irrational and outside civil discourse when [she] spoke of Spirit." Hartigan, supra note 46, at 1167, 1172. Thus, irrespective of an individual's "out" lifestyle, I believe discrimination against such an individual for choosing to publicly engage in a particular lifestyle is wrong.

n53. For an analogous account of similar decision-making with respect to the workplace for Orthodox Jews, see Ron Coleman, A Lawyer and His Sabbath, Student Lawyer 14 (Dec. 1987).

n54. Ota, supra note 7, at 439.

n55. Id.

n56. The decisions to infuse Catholicism into LatCrit II were made, in part, because the St. Mary's Planning Committee members take quite seriously what our dean, Barbara Bader Aldave, has declared regarding the responsibilities of those who teach at religiously affiliated law schools:

We have the opportunity to live our religious faith openly and authentically, and to demonstrate that it not only can coexist with intellectual and professional excellence, but can inspire us to be all that we can be, and to do all that we should do. We who teach in religiously affiliated law schools are a privileged lot. We ought to strive mightily to meet the demands of our calling.

Aldave, supra note 46, at 295-96.

Furthermore, our decisions were also in line with the declarations from National Conference of Catholic Bishops:

Our parish communities are measured by how they serve "the least of these' in our parish and beyond its boundaries - the hungry, the homeless, the sick, those in prison, the stranger (cf. Mt 25:31)... We cannot be called truly "Catholic' unless we hear and heed the Church's call to serve those in need and work for justice and peace. We cannot call ourselves followers of Jesus unless we take up his mission of bringing "good news to the poor, liberty to captives, and new sight to the blind' (cf. Lk 4:18).

Salt and Light, supra note 23, at 3.

n57. As Geoffrey Fox has noted, Hispanics "don't have a common biological descent. "Hispanics,' the Census Bureau reminds us whenever it uses the term, "can be of any race.' They can also be of any religion and any citizenship status, from undocumented to U.S. citizen by birth, and may have any of over twenty distinct national histories. They do not even all share the same first language... These diverse people are a community only to the extent and only in
the ways that they imagine themselves to be. And the only sort of community they can imagine themselves to be is that vague sort we call a "people" or a "nation."" Fox, supra note 24, at 3.

n58. In her essay for this symposium issue, Professor Ana Novoa writes that in her life experience, and despite the patriarchy in the Church and in her own family, the Church nevertheless, "clearly but unconsciously proclaimed that it is the call of the pilgrim church to infiltrate and humanize institutional structures: as prophet to confront and challenge power, as priest-mediator to seek solidarity, and as servant-king to minister to the needs of the marginalized." Ana Novoa, American Family Law: HiStory - WhoStory," 19 Chicano-Latino L. Rev. 265, 282 (1998).

The fact that one of the Law School's clinics is directed by someone such as Ana, whose vision of Catholicism is so progressive and inclusive, makes me proud to be associated with St. Mary's.


n61. Id. at 2.

n62. Interestingly, the two officers who were adamantly opposed to HLSA's supporting the gay and lesbian organization on this point were both male. Of the three officers who were in favor of supporting the group, two were female and one was male.


n64. Stavans, supra note 39, at 154.


n66. With respect to this phenomenon, one commentator has noted, "the traditional Roman Catholicism (and "machismo") of Latin cultures can put latino gay men and lesbians at odds with their communities." Eric Heinze, Gay and Poor, 38 How. L J. 433, 445 (1995) (citations omitted).
We were gathered in one of the three large meeting rooms in what used to be the Marianist sisters' retreat center, now the Center for Legal and Social Justice of St. Mary's University School of Law. Barbara Aldave had not thought about such a job, and the new President of St. Mary's, John Moder, had not known what taking this brilliant woman's dedication to Catholic action on social justice seriously might mean. They ignored the affirmation by the Church of basic economic rights, the need for social justice, and the deeply problematic nature of our treatment of our poorer neighbors. Most of the energy of those ruminating on Catholic higher education has been directed precisely at critique, pluralism, and social justice. We share politics, jokes, commitments to social justice, intersections with Barbara Aldave - and we share La Virgen, Mass in the faculty building, and saying the rosary in times of crisis.

We were gathered in one of the three large meeting rooms in what used to be the Marianist sisters' retreat center, now the Center for Legal and Social Justice of St. Mary's University School of Law. I came in late, as someone was responding to one of the "out" gay Latinos' moving story of his tormented Catholic adolescence, and my colleague Yvonne Cherena-Pacheco explained how we had arrived at such a tense, deep pitch, so early in the day. An Asian-American woman had spoken of how offended she was to be in a room with Catholic imagery, and the former Catholic had responded with his story. Both initial speakers narrated the damage that Catholicism can and does inflict - in their cases, damage due to orientation and race, but, in my experience, there is no one whom the Church has not hurt, one way or another.

But I do not know anyone whom relationship with God has not hurt - or human love has not hurt, or the Good, or any intimation of human aspiration with a name. That is not to cancel out the Church's sins (I use that word as I understand it, coming from the Hebrew word that is an archery term, and means missing the mark), but it is to move the frame of reference from a demand for perfection for the Church to which I belong. I have said often that the one truly irrational thing I do for God is stay in that Church, from which I was free for fifteen years. My belonging is not a matter of reasoned calculation. It is not a matter of calibrating the virtue quotient of the Church, or rating it in some hierarchy of plausible spiritual homes. And it does involve, as I later told the man who had told so movingly of wanting to kill himself as an adolescent, the potential acceptance of responsibility for the things that the Church does that horrify me. That responsibility is not hung around my neck, but is chosen (when it is) because it is part of the mystery of community, of the Communion of Saints, of the Mystical Body - a Body I feel deeply includes all sorts of bodies and their lived intimacies. Where there is love, God is.

It was hard to sort out what hurt most. One was our seeming failure to communicate hospitality to all. One was an acute sense of not knowing what I was doing there myself. One was the presumption indulged by non-Catholics in judging both the Church and us as uncritical of that Church. One was the hostility that I sensed, and then confirmed, directed against my invaluable colleague Beto Juarez.

Beto had seemed officious to some of the attendees; I knew that he had been merely nervous and trying to fill space, being the "good host" chatting away. He subsequently walked into the dilemmas around gender that had arisen the year before at LatCrit I, but by the time he was called on that Saturday morning to do something he could have done (respond to women's requests that he join them in being seated rather than speaking from a "higher" standing posture), the complications were too thick for communication. Beto was initially too pained by the seeming rejection of what was our necessary ground for social justice at St. Mary's - Catholic social justice teaching - to hear why another agenda (one to which I can testify he is usually excruciatingly sensitive) justified the call to sit.

Yet another level of conversation was the spiritual/political role of La Virgen de Guadalupe, a role that varies among communities of Latino/as (she
is not the same for Cuban Americans as for Tejano/as, nor again for Puerto Ricans). In south Texas, La Virgen is crucial, even to newly converted Pentecostal Tejano/as. Among the religious art on the walls of the Center, was a virgin, as well as a multi-racial set of disciples; the Virgin of Guadalupe, La Guadalupana, is the central figure at the Center.

Yet to be at the "center of the margins" promises complexity. That was evident in the richness of the talk that morning. Many women spoke as Latinas, for example, but each spoke differently. One, a lesbian scholar, spoke of the tradition's strengths, but also of how it dictated to her mother a rejection of her. She noted the oval of La Virgen's image, the radical femaleness of the icons to Her, the power of that spirit, and the number of people who had chosen to bring (as their "personal thing of meaning" suggested for the conference) images of Her. La Guadalupana inhabited that discussion that Saturday morning, multiple, and moving, still moving. Another woman of color, the first speaker, responded at the break to my thanks for her speech (because I had been trying to connect with her since I saw her disaffection the first night, and I had not succeeded) by private conversation in which she shared the threat to her sense of family by the Church, her former husband's church. She elicited from me the tears of pain and frustration of not being able to convey how much Beto, seen as insensitive, had been my sanity-saver in deeply sexist settings. We all kept talking.

Back in the full gathering, I spoke to thank the speakers for the difficult things they said, including their raising the question of who belonged at the gathering. I talked about the book I had brought that day to give to Beto, and held up the cover, describing the icon of the very dark, indigenous man (Juan Diego) over whose body and heart was the very dark Madonna. Although the book, Guadalupe: Mother Of The New Creation, was by a cleric, Virgilio Elizondo, I noted, he was a writer for the poor, the undocumented. Everyone, every statement, and every image seemed suddenly fractured, scattered, too complex, too simple.

In the talk, metaphors of family kept surfacing. One of the scheduled presenters talked about how he had hosted his family reunion once, a role that was costly in monetary terms, but only once, because the cost in terms of ingratitude was too high. Several people spoke about their families' faith traditions, about the role of the Madonna in the United Farmworkers' movement, about the mutations of family faith bequest and individual divergences. Cecelia Espinoza said she was not elite enough to be, as many said they were, a lapsed Catholic. Differentiations among those from Cuban or Puerto Rican ancestry surfaced, multiplied, proliferated like a Mandelbrot set into unpredictable, but beautiful, patterns. Strands of tension remained, were pulled, resounded. It was hard to be in the presence of so much anger and pain elicited by the memories of the Church, the very Church in which we from St. Mary's felt ourselves strangely rooted (or re-routed). Yet everyone seemed to be able to affirm the importance of the conversation, and its very value for having broken from expectations, schedules, formats. There was passion, precision, narrative, revelation, risk, and an acceptance of the breaking of the frame, even as the nature of what the frame had been was under interrogation.

A few days later, after we who were left at St. Mary's talked about the difficulties, the remaining dislocations, we began to experience that the wonder of it was that people felt safe to say such things. Although none of us managed some absolute stance of universal respect, under the things that could be approached critically, was the reality of the gift of stories of what the Church had failed yet to heal. For those of us in the church explicitly, that constitutes an invitation to engage in the work of healing, what rabbinical Judaism calls tikkun olam, "to mend the world".

I marvel at the remembrance of Center staff member Marilyn Llanes, standing to speak amid the static and stories, to re-issue an invitation of hospitality. She spoke words of concern, welcome, and an ongoing attention, and asked that people consider her a resource for whatever they might need as the day went on... her presence seemed to me stronger even than her calm words, manifesting her reception of all who were in the room. She invoked and performed responsibility for a hospitable space, with a clear acceptance of the difficulties of the conversation. To my eyes, she was living the reality that her calling was based in spirit, and her understanding of her job as ministry.

It is not surprising that it was not one of the faculty who maintained such clarity of consciousness. Rather, it was a Latina who could hear the different accents, having served in San Antonio but come from Cuba, having been in the convent, but now experiencing her vocation in the mixed world of a law school struggling to embody the best of the Catholic tradition. She was her own unique instance of intersections, mestizaje, including the most mysterious mix of all, that of spirit and law.

That so many law professors were so perturbed by the images that the Marianist sisters considered holy, is a sign of the times. That it happened in a conference called on the theme of the Latina, meant that the salient
face of the Divine was of the dark Madonna. And She is a powerful force in ways Anglo Catholics are only now learning.

We should have already known who She was. I remember hearing Her story, even back in 1950's Virginia, in a "missionary diocese" staffed by Philadelphia nuns. Those Pdoxes in veils and wimples knew Her power, and told the story of Her apparition with glee, savoring the part about how dense the Bishop was. From the most immediate source of Church authority, the rulers (ahem) of the classroom, choir and "Father Gallegher's grass" (on which one NEVER walked), the subversive story began. Each year, it was repeated with greater relish when the subordinated one was proved right by the Queen of Heaven. The nuns, by and large, knew race was important; they said that Juan Diego was the "despised" of the "scorned" (although, for mixed reasons I am sure, the portrait of Mexicans in our geography lessons was quite positive, the nuns portrayed them as a poor nation, and the indigenous as the poorest of the poor). The European at the top of the Church hierarchy in colonial Mexico did not, as the nuns told the story, know what he was talking about. The "uneducated" indio did, and it was a secret [483] between him and La Guadalupana, a secret Sister Blanche passed on to those who had ears to hear.

My husband and I are currently building a house in the south hill country outside San Antonio, and on its west side is the portrait of La Virgen, in tiles we bought in Monterrey, Mexico. Only after the light above it was installed, did I realize what had happened to Her on the side of our house. She is caught in the shadow, a soft line of darkness across her face, darkening it into the shade that the Woman in Aztec garb illuminates most credibly, for me. It is the reiteration of the image of Notre Dame I encountered when I first visited Her campus in South Bend, - face in shadow, depth of obscurity that outshines mere, facile, "clarity" as we have known it.

The movement beyond false clarity is what the complexity of that conversation the last day of LatCrit II meant for me. It resists a single theme, a formulation, a neat recapitulation. It exceeds categories. It overflows the abundance of "Latina" and "LatCrit" and even "Catholic" and "catholic" - overflows into what we are becoming and cannot yet articulate.

What is the relation between an excess of signifiers, to use the LatCrit vocabulary, and a Catholic university? The first thing to come to my mind is the quotation that I found in Robert Rodes' essay, Catholic Universities and the New Pluralism. n5 I received the book in which the essay appears in a deeply ironic way, as a gift from Tom Shaffer as he tried to steer me away from something I was called to address as an issue, sexual abuse by clergy. I got the book and read what Tom recommended, but because I would not pledge not to mention the issue, I was disinvited from the conference to which Tom had invited me. In retrospect, I believe that our uncanny collision was not our wish but was about the business of a mysterious God, whose spirit blows where it listeth. Part of its listing, was toward Rodes' striking essay. Rodes quoted Gaudium et Spes for the notion that the reign of God is "already present in mystery" and that the Church is to express it to the world. n6 We are to read the signs of the times, the encyclical continues n7 and Rodes carries it forward:

Because the kingdom is now present in mystery, the work of furthering it is mysterious work. We cannot limit our Aspirations to what our methodologies tell us is possible. If the church is to be a sign and safeguard of transcendence, then when we cannot be safeguard, we must still be sign. n8

[*484] Part of that movement beyond safeguard, out into the abyss of being sign, Rodes predicts: we are to provide an intellectual foundation for the mission of the church (the preferential option for the poor), which will bring down the economic, social and cultural structures which sustain our comfortable academic lives.

Read directly, Rodes is not promising tenure and a chaired professorship to the denizen of a truly Catholic university. He is promising dislocation and radical change. He is not exempting those prescient enough to be at the leading margin from the costs of being sign, from the costs of such decentering. But he is inviting us to a faithful role of leadership, a dangerous vocation.

This promise of danger is not always fulfilled, even for those who preach it. Rodes and another who urges law professors to be prophets, Tom Shaffer, n9 were at the time of the paper described below, tenured, chaired professors at Notre Dame Law School. Shaffer has since "retired" into the clinic at Notre Dame, giving substance to his advocacy of service to the poor, and Rodes recognized the difficult story I was trying to tell in the paper. Shaffer concludes that lawyers do their best work despite their profession n10 and suggests that the Church and its communities (including universities) are at their best when they are out of conformity with the conventions of society.

With such an iconoclastic view of the Catholic university, how could the considerable discomfort of that Saturday morning discussion be other than gift?
And even the extremely difficult path of conversation with Tom Shaffer, begins to reveal its gift more fully. For the paper I read, citing Rodes' recognition of the need to be sign, when I was later invited by someone else at Notre Dame Law School to give a paper, was about La Virgen and Notre Dame. I drew on the differences, the patrician French Lady encircled by Irish (now mostly upper-middle class, as Notre Dame is an elite institution, in the difficult sense of the word elite), versus the Santa Maria of the poor, the previously "invisible" n11 brown people, the borderlands. But what my paper recalled was the power of my first prayer at Notre Dame's main chapel, because (presumably due to a burned out light bulb) Herself was half in darkness when I went in, and She created in me a truly holy terror.

[*485] One aspect of that terror is (the "terrible beauty" of) n12 darkness, the dark Madonna, the unknown - and another is the unknowing of silence. Mary has few lines in the Gospels; her job is mostly to "ponder in her heart" and to be present. But now it is time for the divine feminine to speak. I think her first words might well be ones of welcome, of acceptance, of hospitality. That is why I am so grateful to Marilyn Llanes.

I am also grateful to the community of which Marilyn is a part - the community of spirit-centered people who have been gathered at St. Mary's. We came because an uncanny little old man, gimpy and bearded with pockets full of newspaper clippings and Catholic Worker protests, Spike Zywicki, nominated a woman he had met at protest gatherings in Washington, to be the law school dean. Barbara Aldave had not thought about such a job, and the new President of St. Mary's, John Moder, had not known what taking this brilliant woman's dedication to Catholic action on social justice seriously might mean. But for at least this time and place, the forces have brought together a stunning community of commitment, prayer, action and scholarship.

Into such a congruence, came those with negative relationships with the Church. These were not protests against the Bishops' pastoral on the economy, the Mass in the vernacular, or the other egalitarian scandals of Vatican II. These were experiences of the Church's judgmentalism, its intolerance, its narrowness, its slowness to learn. I wish the speakers had been able to recognize more complexity n13 themselves, but I am glad they came, willy-nilly as they could, and spoke as they did.

And then the other side of this difficult gift. I experienced some speakers' willingness to eat and talk through others' prayer, their assertions of oppression by a Catholic university's being what it is, the stance of "more critical than thou" and the willingness to reduce another's religion to anthropology, as offensive. I find the inability to recognize the redemptive sides of the Church, whose social teachings are nothing less than revolutionary, sad. n14

[*486] A number of speakers rushed into judgment, lacking either the very critical distance they invoke or the respect for another's experience of the sacred (much less the reasonable, respectful assumption that the Catholics in the room had themselves already considered the critical aspects of their own tradition). They ignored the affirmation by the Church of basic economic rights, the need for social justice, and the deeply problematic nature of our treatment of our poorer neighbors. They recapitulated what many commentators have identified as anti-Catholicism, apparently without consciousness of that phenomenon (had much of what has been written or said been written or spoken of Judaism, for instance, the implications would be rather immediate). Preaching pluralism, they did not manage to practice it in their address to the Catholics. That is not surprising, but it does have consequences, and they are important to note.

One face of those unintended consequences came to me when I was at the march on Washington in April of 1993, the march in support of gays, lesbians and bisexuals. I went with Quaker friends and we gathered among the numerous religious groups. Sitting among banners for "Queer Catholics" and the like, we were assaulted by one speaker in particular, who boomed out an explicit, hate-filled diatribe on Christianity. The speaker, and many of those who speak their pain, at the ignorance of mainstream Christianity for many years, are understandable. But they do not acknowledge that there are many ways of being despised, and anti-Catholicism has a long, secure history in the United States and the world. When I was growing up in southern Virginia, I was told that KKK stood for Ku Klux Klan and for Koons, Kikes and Katholics. It was frightening, as any hatred of one's deepest sense of self and God must be.

It was also frightening to see the pain on the faces of my brothers and sisters who had come to the 1993 march with joy and solidarity, and had not expected to have the most pervasive aspect of their consciences met with such undiscriminating condemnation. They truly thought they were coming to a uniquely safe and rich space in which they could be who they were with an unprecedented openness, and found that they were not so safe. The careless denunciations did not deter their basic message, however, and we marched under the chant "we're here; we're queer; we're Quaker, and we love you."
Similarly, the considerable pain caused by some of the judgments brandished during that Saturday morning discussion is not the end of the conversation.

[*487] For me, continuing conversation starts with the irony that most of us in the world of Catholic universities are much more focused, in general, on the critique of the Church, than on its authority. The discussions I hear and read are mainly concerned with the Vatican's rather heavy hand on issues of theological academic freedom, not with how we can become more like the Pope. Just as the North American bishops have issued critiques of the current economic injustice in the United States and exhortations to treat same-sex relationships with love (giving the one Latina speaker an avenue to explore with her mother: "Mom, the Church says to love me first"), n15 so also have they resisted the intellectual/theological hegemony of the Roman magisterium. For almost seven years, the United States bishops have been trying to get the Vatican to accept an effective modification n16 of Ex corde Ecclesiae ["from the heart of the Church"], the Pope's 1990 Apostolic Constitution on Higher Education that restricts the freedom of those in Catholic institutions of higher education. Canon 812 of Ex corde Ecclesiae directs that "Those who teach theological subjects in any institute of higher studies must have a mandate from," in effect, the local bishop. The United States Bishops, in their proposed adaptation of the Papal document to the United States, tried to maneuver around the barriers that Canon 812 might have posed: the Vatican responded by rejecting the proposed draft, approved by the Bishops by a vote of 224-6 in November 1996. n17 Most of the energy of those ruminating on Catholic higher education has been directed precisely at critique, pluralism, and social justice. Most of the reflection by those of us living in that set of issues, has been similarly directed. Thus, the most astonishing aspect of the conversation at St. Mary's that Saturday was the unconsciousness of those who complained, about the reality of the Catholicism that had shaped, named and inspired the space into which they had been invited. The underlying assumption was that those of us who were Catholics would take any of what they said as news about the Church. The necessary assumption was that we were less, rather than more, critical than they.

[*488] How very strange, to me. Having left the Church, left God, left all that I had believed, and wandered in doubt for years, I am acutely aware of every wart and wrinkle of the Church that has been mentioned in my hearing or spawned by my own perpetual skepticism. I have stood up and left in the middle of homilies; I have refused to attend churches; I have spoken directly to priests and bishops of their abridged notion of God. I have not bothered much with priests and bishops because to me the Church is not primarily about the hierarchy. I have included in my scholarship the grave incongruity of my belonging to the same Church with a man who thinks my genitals make me not in Christ's image. n18 I suspect I have thought at least as much, read as much, challenged as much and suffered as much, about the Catholic Church, than was apparent among the most vocal naysayers. This does not make me right or superior - but it does entitle me to some key voice in saying what my Church is. Some of the voices that morning seemed to talk as if they could position themselves as anthropologists of religion, could recite the Church's history, tell its (sole) story, pronounce judgment on it. The stories they told were not confined to their lived experience, the experiences about which they had true authority and that were invaluable. Beyond that valid stance, their stories trespassed; they did not leave room for the rest of us, and most particularly for those of us who count the Church as dysfunctional, obnoxious, sinful, holy, functional - and Home. We had invited them into our home, and they acted in a way too similar to the wretchedly eloquent stories of how other religions and cultures (especially Native American, Aztec, Mayan) had been savaged by my Church. The Catholic Church has a colonial legacy in this hemisphere along with its progressive teachings - more concretely, however, it has living, faithful, resistant members, many of whom had already testified to their faith openly at the conference.

One source of this relapse into judgmentalism, I believe, is the strange, unconscious hubris of secular academics. The people who spoke carelessly, did not believe, is the strange, unconscious hubris of the academy, not the least of which was Rorty's nearly off-hand conclusion that "all civilizations are not equal - some, like the Aztec, are clearly inferior." n19 The moderator [*489] did not read my question to him about just how they were inferior to those of us who in our orthodox version believe we eat the genuine flesh and drink the genuine blood of an executed Palestinian Jew, but did opine that they were unable to live up to their epistemic stories. n20 Similarly, to tell stories of having been oppressed by the Church is one, extraordinarily rich, thing; to engage in sweeping
judgments of another's ground of faith is something very, very different.

At this point, perhaps the most constructive thing I can offer is the unanticipated joy that the conference offered me. I had expected to be stretched, to feel awkward, to realize more and more of my ignorance; I had not expected to be so deeply affirmed in the reality of why I am at St. Mary's. I am here because I am a Catholic. I grew up in Virginia, knowing much of what Southern racism against African-Americans meant, living in its texture. My experience of Latino/as was mediated through a few books; if there were any in our community, my culture hid them from me. After college in Pennsylvania, where blacks were "an issue," but "browns" were barely visible in my restricted world, I lived in Wisconsin and Nebraska, both of which had minuscule minority populations. Now I live where I am a minority, and it is a life faced with newness, disorientation, and the unexpected. I find myself deeply bonded with my Latino/a colleagues, but the bond is, most of all, one of Spirit. We share politics, jokes, commitments to social justice, intersections with Barbara Aldave - and we share La Virgen, Mass in the faculty building, and saying the rosary in times of crisis.

The building which some found so conflicted, had been blessed with holy water just months before. It had held Helen Prejean at the feast day Mass of Our Lady of Guadalupe, saying that on that day, there was no place else in the world she would rather be. It holds brown women, indigent, undocumented, battered, and their children, every day. It is full of ex-nuns and current nuns and zany old men like Spike. In it we have fiestas and tamaladas and tears and prayers. And so we had more tears, and hard stories, and ragged judgments and movements to reconciliation, at LatCrit II. And we who are left here, still rejoice in it.

As witness to that rejoicing, I want to convey the letter that one of our administrators, Elise Garcia, sent to the president of the university last week. It is a pean to the function that the Center, the very place so difficult for some of those at LatCrit II, plays in the community of South Texas, the borderlands.

Elise wrote of a battered, immigrant woman named "Sylvia," who due to the efforts of students, faculty and staff at the Center, was released from a Laredo detention center in December 1997. "At the age of fifteen, Sylvia was captured and tortured by an elite, U.S.-trained battalion in her native El Salvador. It was the same battalion that had committed the massacre of El Mozote and murdered the Jesuit priests. She was held prisoners in the women's political wing of the Ilopango prison in San Salvador for nearly two years. After being released in a general amnesty, Sylvia returned home and tried to resume her previous life. Her peace was short-lived, however. On receiving numerous death threats, Sylvia fled to Mexico where she managed to stay for a year before the authorities caught up with her and began to initiate deportation proceedings. Again, she fled - this time to the United States.

Sylvia had the misfortune of meeting and marrying, under Texas common law, a U.S. citizen (a middle-school teacher!) who continually beat and abused her." After more misadventures with the law, Sylvia was to lose her children and be sent back to her country. "While in detention, Sylvia had found a piece of paper with the name and phone number of the Center for Justice. When she placed the call on September 1, Sylvia reached Liz Garcia, the receptionist/intake worker. Liz was so moved by her story that she immediately contacted Monica Schurtman and begged her to take on this seemingly hopeless case." Monica, the co-director of the Immigration and Human Rights Clinic, and Cathleen Culhane, a clinic student spent outrageous hours (and bus time, for Cathleen, who had no car with which to drive the nearly three hours to the Laredo detention center) finding the legal tangles in which they could wrap Sylvia for protection. She was finally released, and even got to see her children. It was a remarkable saga, and, as Elise concluded, a wonderful Christmas story.

This is one story from our "Center for the marginal" staffed primarily by Latino/as, women, people of color. Now is the time to tell such stories. It might have made our academic story different had those who revealed their wounds listened for the Center's story, or heard it as it had been celebrated during LatCrit II. But the story is always changing from what it might have been into what we make it and we make of the difficulties that Saturday morning, an ongoing conversation. Always a party to that conversation, is a mysterious woman of color whose Nahuatl name, Tlecuauhtlacupeuh, sounded to the Spaniards like "Guadalupe." She is controversial and always subject to attempts at political manipulation, but she is also "A Radical Figure for All Time," one who would have been (was) both present and ironically active in gatherings of those who attend to the dispossessed, critique the powers that be, and value stories. Saturday morning, with its tears and offenses, could not have happened without Her.

FOOTNOTE-1:


n4. The journal that chooses to use TIKKUN for its name translates it on its back cover as "to heal, repair and transform the world." Tikkun: A Bimonthly Jewish Critique of Politics, Culture & Society.


n6. Id. at 308.

n7. Id. at 309.

n8. Id. at 310.

n9. See generally Tom Shaffer, On Being A Christian and A Lawyer (1981). Shaffer even suggests that lawyers are to be the "lepers" of their communities. Id. at 217.

n10. Id. at 219.


n12. This is not patriarchal darkness, the repository of the symbolic evil, but the darkness of the aporia, the rich ground of mystery, the miracle of the empty tomb. The fecundity of the "dark" abyss is explored in phenomenological texts like those of Emanuel Levinas, Ethics and Infinity (1985) and the theological texts like Henri Nouwen, Lifesigns (1986), as well as the many feminist theologians such as China Gallant, Tara and the Dark Madonna (1990) and Mary E. Giles, Take Back the Night, in The Feminist Mystic (Mary E. Giles ed., 1987).


n14. In addition to the sexual orientation pronouncements of the U.S. bishops cited below, recent examples include the Statement of the U.S. Bishops Committee on Migration (1995) and the Pope's recent comments about the immorality of the United States' exclusion of non-citizens (both here and across the border) from access to jobs.

n15. The bishops composed a Pastoral Letter entitled "Always Our Children" in which they stress that the primary goal of parents should be maintaining a loving relationship with their children, that homosexuals should be welcomed in parishes, and the issue surrounding sexual orientation should be openly discussed. David Briggs, Bishops Tell Parents to Put Gay Kids First, San Antonio Express-News, Oct. 1, 1997, at A1.


n18. This is in contrast to the more advanced practice of, for example, the Aztecs, who had women priests. See infra note 19, at 100.

n19. A more pragmatic, reasoned account would be akin to that in Pierre et Janine Soisson, Life Of The Aztecs In Ancient Mexico (1978), which explores the extensive writing, architecture, and civic organization in Aztec culture though not ignoring the sacrifice and other practices that offend current sensibilities of those who live in a country (the United States) that Europeans now consider barbaric in its deliberate electrocution, hanging and poisoning of its citizens after elaborate rituals in ornate chambers presided upon by robed figures with wooden mallets.
n20. The difficulty they faced is hardly novel; for a reflection on such multiple epistemic standpoints, see Joseph Raz, Facing Diversity: The Case of Epistemic Abstinence, 19 Phil. & Pub. Aff. 3 (1990).

n21. Ironically, in a commentary on Rorty's claim of Aztec inferiority, the usually acute Joan Williams herself seems to miss the point. Although concluding that Rorty is right to remind us of the necessarily historical nature of reality, she deals with his account of "our" revulsion with "Aztec sacrifice" by presuming what the "some variant of a quite different vision" than "ours" the Aztec must have held, rather than investigating their view. Joan C. Williams, Rorty, Radicalism, Romanticism: The Politics of the Gaze, 1992 Wis. L. Rev. 131, 137. Similar elisions of history took place in nineteenth century Texas based on a similarly ignorant view of the extraordinarily complex Aztec culture. Arnoldo DeLeon, They Called Them Greasers: Anglo Attitudes Toward Mexicans In Texas, 1821-1900, 65-66, 123 n.17 (1983).

n22. The full letter is on file with the author; the parties involved in the letter, including "Sylvia," have agreed to its disclosure.

ESSAY: THE MISSING CENTER? CUBA'S CATHOLIC CHURCH

WITH A PREFACE AND A PROSCRIPT/REFLECTIONS
Max J. Castro *

BIO:

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SUMMARY: The remarks immediately below, which were originally published in The New York Times on the Web, were written at a very special time - on the eve of Pope John II's January 1997 visit to Cuba - and with a very limited and specific intention. The purpose was to provide the general U.S. reader some historical and sociopolitical perspective on the Cuban Catholic Church. In the interest of conciseness and simplicity, many crucial issues were not addressed in that text, including problems of race, class, and gender and, especially, the relation between Catholicism and Afro-Cuban religions. Rather than alter the integrity of the original by attempting a rewrite, I have chosen to use a postscript to reflect on some of these more complex questions and to suggest the relevance of the discussion to the concerns of Latino critical legal studies.

I. The Missing Center? Cuba's Catholic Church

Cuba is on the map. Again. This time, however, it's not because of an exile invasion, a missile crisis, a mass migration, the shooting down of an airplane, or a new set of U.S. economic sanctions.

Pope John Paul II's pilgrimage to Cuba, the first ever by a pontiff in 500 years of Catholic presence on the island, has attracted more media attention to this nation of 11 million than any event in the country's history. The focus is mostly on the implications of the dramatic encounter between two forceful, aging leaders who embody staunchly-held but clashing philosophies - Karol Wojtyla, the Polish Pope and Fidel Castro, Cuba's communist president. Beyond the larger-than-life personalities and endless speculation about whether John Paul II's visit will lead to a change in U.S. policy and/or a transition to democracy in Cuba, there is a history and a context. These are key to understanding why and how what, until recently, seemed to many observers to be a very improbable event is now taking place.

One key is the Catholic Church in Cuba, its historical role in relation to national identity as well as its recent evolution and current status. As a child in pre-revolutionary late 1950s Cuba, I remember my father joining my mother and me at mass only on very special occasions - and usually under duress. My father, a self-taught philosopher with a fourth-grade formal education who published articles on Kant in leading Cuban cultural journals and lectured at international conferences, was fairly typical not only of intellectuals but, more generally, of Cubans of his generation and social class. "I invite you to carry out a study about the
men of the world of culture and politics in Cuba during the last hundred years." Monsignor Carlos Manuel de Cespedes, a leading Catholic thinker in Cuba today, wrote in 1996. "How many... have been institutionally and sacramentally identified with the Church?" n2

Not many, men or women. Not even Jose Marti, the 19th century intellectual, political organizer, and patriot who Cubans on both sides of the ideological divide acknowledge as the embodiment of the nation's highest values and aspirations. Before 1959, some Cubans practiced a nominal, social Catholicism; others practiced santeria or other religions of African origin instead of or alongside Catholicism. The Cuban Catholic Church was not as daunting a force in the society as the Latin American stereotype would imply. And, a 1957 study found that while 73 percent of Cubans considered themselves Catholic, only 24 percent regularly attended Sunday mass. n3

This kind of evidence has led many observers, such as the Cuban-American sociologist Lisandro Perez, to describe the Cuban Catholic Church as a weak institution. n4 As reasons, Perez points to (1) Havana's historic role as an "immoral," freewheeling port city; (2) the scant resources available to the religious institution and the scarcity of priests in rural areas; (3) the rise in the 19th century of a type of sugar production based on massive slave labor, huge mills, and maximum efficiency, a concern which led mill owners to refuse to "economically support a religious institution and the [scarce] priests in rural areas; (4) the rise in the 19th century of a type of sugar production based on massive slave labor, huge mills, and maximum efficiency, a concern which led mill owners to refuse to "economically support a religious presence" or "grant slaves the time to practice the sacraments, to receive religious indoctrination, and to observe Sundays and religious holidays;" (4) early and extensive competition from Protestant religions, aided and abetted by the first U.S. military occupation of the country (1898-1902) and the massive U.S. influence in the following decades; and (5) the alignment of the Catholic Church hierarchy, in the late 19th century, with Spanish colonialism against the Cuban independence movement. n5

The result, Perez points out, was that in Cuba, unlike in many traditionally Catholic countries, the Constitution established the separation of Church and state, public education was secular, and divorce was not only legal but could be granted merely upon the request of both parties. At the time of the revolution of 1959, Cuba was no Poland, and in the early years of a then-very popular regime, the confrontation between Church and state was no contest.

But there is another side to this picture. If the Cuban Catholic Church was so fragile, how did it survive the challenge of a revolution, asks Monsignor de Cespedes? n6 The Catholic Church in Cuba was no leviathan. It was something else, though: foundational, a tree often battered by hurricanes but resilient, deeply rooted in the soil, and intertwined with other vegetation. The Virgin of Charity, Nuestra Señora de la Caridad del Cobre, the patron saint of Cuba, whose image appeared circa 1608 to Juan Moreno, a black slave, and to the brothers Juan and Rodriguez de Hoyos, Indians, is an enduring presence in Cuban culture and an emblem of national identity that transcends eras, social classes, racial differences, even ideological debates. Of the priest Felix Varela (1788-1853), it is said by Cubans that "he first taught us how to think." To think in Cuban, adds de Cespedes. n7

Jose Marti was foremost among those who, indirectly, absorbed Varela's teaching; he used them to launch Cuba toward the path of modern nationhood.

[*496] The Republic about which Marti dreamed was plagued by many problems. The revolution of 1959, led by Fidel Castro, who overthrew the Batista dictatorship, promised to solve them all. Many Cubans, probably a clear majority, supported the revolution as it lurched leftward far beyond anything Castro had ever hinted at. Others, including probably a majority of the middle class and most Catholics, became increasingly disaffected. By 1959, the Church in Cuba had recovered substantially from its low point at the turn of the century and had developed a network of institutions, even a university. In the early 1960s, Church leaders opposed the revolution's drift toward communism. The Cuban government responded by cracking down. On September 17, 1961, 131 priests were expelled. Others fled the country. Between 1960 and 1965, the number of priests in Cuba fell from 723 to 226. n8 Catholic schools were taken over by the government. A substantial portion of the Catholic flock went into exile. Others went underground and took up arms against the government. Most were caught, and many of those were executed, shouting "Viva Cristo Rey!" as they faced the firing squad. Church attendance plummeted. Some of the religious who remained ended up in prison or in work camps, along with others considered social undesirables by the regime, including homosexuals. One of the alumni of the work camps is Jaime Ortega, currently archbishop of Havana and only the second cardinal ever in Cuba's long Catholic history. n9

It is not too surprising, then, to find, in a book published by the Conference of Cuban Bishops in 1995, which contains 100 key Church documents issued over the last forty years, an eight-year silence (1961-1969). n10 More interesting is the change in tone and content over this time. "Rome or Moscow?" asked Enrique Perez Serantes, archbishop of Santiago de Cuba, in a 1960 document. n11 In the last document from this period, dated February 11, 1961, Archbishop Perez Serantes stated that he must disapprove of communism, for otherwise he would...
the influence of Vatican II and the 1968 conference of Latin American bishops, held in Medellin, Colombia, both of which pointed toward a more socially active Catholic Church. A passage in the 1969 document, signed by the Cuban Conference of Bishops and addressed to priests and the faithful, speaks of the injustices caused upon small, weak, underdeveloped nations by the unjust structure of international relations. "Is this not the case of the economic blockade [U.S. embargo] that our people have been subjected to, the prolongation of which heaps grave inconveniences on our fatherland?," it asks. These injuries, the Bishops add, fall mainly upon rural and urban workers, housewives, children and youth, the sick, and families separated from their loved ones.

What happened to change the tone from the strident anti-communism of the early years of the revolution? The Church had not died in the 1960s, but it was in critical condition. Having tried confrontation in the early 1960s and having been nearly crushed, the Cuban Catholic Church, with help from a succession of Papal nuncios, adopted a long-term strategy of quiet diplomacy aimed at bridge-building. This approach has been sharply criticized by those who believe the Church should have spoken out loudly against human rights abuses. What is clear is that the change ensured the institution's survival, and that it meant that the Church that emerged from the abyss would not be one looked upon favorably by those who have never changed their strategy or their language, especially hard-line exiles in the United States.

A remarkable document, the final report of the Cuban National Ecclesiastic Congress held in 1986, describes the evolution of a new vision within the Cuban Catholic Church, which now "feels called to embody an attitude of reconciliation and dialogue at a national level...." The Church the document goes on to say "went from an acceptance of the reality of the socialist character of the revolution, without antagonizing the socialist project as such, to a coincidence in the fundamental objectives in the field of social development: public health, education, the availability of work for all, satisfaction of basic needs, etc." Relations between the Church and the state generally improved, and in 1992 the Cuban constitution was changed to remove official atheism. But the regime continued to place severe restriction on the Church, including barring access to the media, a practice that has continued, broken only now as a direct result of the Pope's visit.
The Cuban Catholic Church is not a political party, but if it were, it would be that missing link in the Cuban political universe, a party of the center, of moderation and dialogue, somewhere between exile hard-liners and communist diehards, with bridges open in both directions. It would be a nationalist party averse both to the confrontational excesses that the Cuban regime has often engaged in vis-a-vis Washington and to the tight alliance with the U.S. government - and specifically with some of the most reactionary forces in U.S. society - that has characterized much of the anti-Castro exile struggle, from the CIA-directed Bay of Pigs invasion in 1961 to the Helms-Burton law of 1996. Economically, the Church-as-party would attempt to break from the inefficient state-run economic structures in place in Cuba while doing everything possible to prevent the vulnerable from paying the price for change.

The Cuban Catholic Church is not a political party, but it can, in the words of a leading Cuban Catholic clergyman, "offer itself as a bridge and space for the necessary dialogue," national and international, that can lead away from the vicious cycle of confrontation and hatred and offer the people of Cuba a more democratic and prosperous future. The Pope's visit to Cuba surely will shore up that bridge and widen that space that a reborn Cuban Catholic Church proposes as an alternative to the bloodshed, resentment, division, and isolation of the past.

II. Postscript/Reflections for LatCrit Theory

The evolution that the Cuban Catholic Church has undergone in recent decades reflects broader changes that have taken place in the Church in Latin America. Such changes suggest the inadequacy of a static, ahistorical, unidimensional or manichean view of the role of religion(s) in resisting or overcoming oppression.

With respect to the Cuban Catholic Church itself, this insight is underlined by certain tensions that surfaced during the Pope's visit which point to the persistence of condescending attitudes with respect to Afro-Cuban religious traditions. Cardinal Jaime Ortega's explanation of why representatives of the santeria religion were not invited to the ecumenical meeting with the Pope - that santeria does not represent a separate religion from Catholicism but rather a form of popular religiosity within - was hardly convincing to the babalos. n19

[^499] The fact that the Cuban Catholic Church is playing or could play an extremely constructive role - as a mediating force between authoritarian extremes, serving as witness, alleviating suffering, and denouncing injustices (whether it be the U.S. economic war against Cuba or acts of violence and repression by the state in Cuba) - does not mean that even now the Church plays a liberating or anti-subordination role in every instance.

The effort to subsume or assimilate santeria may be seen as openness on the part of the Church but also, and more disturbingly, may reflect a denial of the full equality and dignity of this difference. n20 The Cuban Catholic Church played no significant role in opposing slavery, and it is still coming to terms with the idea that while Catholicism is foundational, it is not the only stone on which national identity is built. "Sin el negro Cuba no seria Cuba," wrote Fernando Ortiz, one of the deepest thinkers on questions of Cuban national identity. n21 African religious and cultural traditions are as foundational as Iberian/Catholic ones. La Virgen de la Caridad is associated with Ochun. Or is Ochun associated with the Virgin of Charity? The Catholic Church has yet to be successful in reflecting, within its own ranks, the racial diversity of the nation. Currently, only a handful of priests in Cuba are of color. This in a nation in which, by most accounts, a clear majority is black or of mixed race. To the extent that the Cuban Catholic Church of the 1990s is committed to working with and for the poor, overcoming - perhaps for the first time in its long existence on the island - its association with the more affluent sectors of society, can it succeed if its complexion does not reflect the face of the nation?

Gender is another problematic dimension. A distraught friend, a Cuban woman who lives in Mexico, in an email sent during the Pope's visit, wrote me to say that "the right to control our bodies, the right to abortion, is one of the few things we women have gotten in return for enduring the hardships of Cuban socialism." Cuba is the only country in Latin America where women do not have to risk dangerous backroom abortions; the state provides free abortions on demand. n22 Listening to some comments by Cuban President Fidel Castro to the effect that he personally does not approve of abortions, and having just heard the Pope's diatribe on the issue delivered at a[^501] Mass in Cuba, she wondered if Cuban women might not be the losers in a Church-state rapprochement. Making abortion illegal is unlikely under the current system. Castro's position is identical to that of many U.S. politicians. Essentially, he is personally opposed but pro-choice as far as policy. But, judging from the experience of Eastern Europe, the criminalization scenario cannot be ruled out in a post-communist Cuba, especially if the Catholic Church were to grow into a more commanding presence in the intervening period.
Notwithstanding the vast difference in the context, the Catholic Church in the United States plays a role not unlike the complex and contradictory one described above for the Cuban Catholic Church. In the U.S. the Catholic Church is one of the few strong voices around these days for dignity for immigrants and for the rights and interests of the poor and against the death penalty. But Church positions on abortion, the ordination of women, and homosexuality place it significantly at odds with progressive movements in this country.

Perhaps the most reasonable course for us to assume vis-a-vis the Catholic Church is one of reflection and dialogue. We need to understand the institution more deeply rather than in a stereotyped and summary fashion. We need to affirm and defend our positions openly but not self-righteously, accepting that orthodox Catholics may not share them, and demanding equal respect for ourselves and our views.

As a non-believer, I have no problem asserting that, in this world increasingly dominated, alienated and disenchanted through the iron rule of global capital, the Catholic Church, in its current incarnation, defends and upholds certain human values more effectively than almost any institution on the planet.

FOOTNOTE-1:


n4. Id. at 147-48.

n5. Id. at 149-57.

n6. "Basteme recordar que si la Iglesia Catolica en Cuba fuese esa realidad tan fragil, especialmente empactada y poco enraizada en la vida del pueblo cubano que muchos han afirmado en a&lt;~n~os recientes, no habria podido sufrir el embate del marxismo-leninismo...." ("Let me just recall that if the Catholic Church in Cuba were that fragile in reality, so little rooted in the life of the Cuban people as many have asserted in recent years, it could not have withstood the battering of marxism-leninism....") Carlos Manuel de Cespedes Garcia-Menocal, Los Enigmas De Turandot, La Iglesia Catolica Y La Cuba Unica, 6 (Feb. 27, 1996) (unpublished manuscript, on file with author).


n8. See generally, Perez, supra note 3 (explaining the context for the drastic reduction in the number of priests on the island).

n9. See generally, Juan Clark, Religious Repression in Cuba (North-South Center, University of Miami 1985) (presenting the views of a conservative Cuban-American scholar on the issue of religious persecution).

n10. See Conferencia de Obispos Catolicos de Cuba, La Voz de la Iglesia en Cuba, 100 Documentos Episcopales (Obra Nacional de la Buena Prensa: Mexico, D.F. 1995).

n11. Id. at 135-141.

n12. Id. at 170.

n13. Id. at 171-176.

n14. Id. at 175.


n16. Id.


n19. See Juan O Tamayo, Santeros cubanos encaran descriminacion ante visita papa, El Nuevo Herald, Jan. 12, 1998, at 1A.

n20. See Enrique Patterson, Entre el poder y la gloria, El Nuevo Herald, Feb. 16, 1998, at 13A. See also La Iglesia:

n21. Fernando Ortiz, Etnia y Sociedad 136-40 (Editorial de Ciencias Sociales, La Habana 1993) (Ortiz's writings offer a penetrating analysis of racial and cultural issues in pre-revolutionary Cuba.).

AFTERWORD: RELIGION, GENDER, SEXUALITY, RACE AND CLASS IN COALITIONAL THEORY: A CRITICAL AND SELF-CRITICAL ANALYSIS OF LATCRIT SOCIAL JUSTICE AGENDAS

Elizabeth M. Iglesias * & Francisco Valdes **

BIO:

* Professor of Law and Co-Director, Center for Hispanic and Caribbean Legal Studies, University of Miami School of Law. Thanks to St. Mary's School of Law and the UCLA Chicano-Latino Law Review for sponsoring the Second Annual LatCrit Conference commemorated by this symposium, as well as to the organizers, participants, symposium contributors and particularly to the UCLA student editors, Jeffrey Reyna and Claudine Martinez, for making LatCrit II a historic contribution to the continuing evolution of LatCrit legal theory. Special thanks to my friend and colleague, Frank Valdes, for his many strengths of mind and spirit and for the always creative and sometimes even awesome synergies our collaborations have allowed me to experience. All errors I share with Frank.

** Professor of Law and Co-Director, Center for Hispanic and Caribbean Legal Studies, University of Miami School of Law. I thank first and foremost my friend and colleague, Lisa Iglesias, for an enriching composition process and a wonderful professional friendship. I thank also Bob Chang and Sam Kaplan for comments and ideas that developed parts of this Afterword. Because this symposium commemorates the Second Annual LatCrit Conference, I thank the two sponsors, St. Mary's School of Law and the UCLA Chicano-Latino Law Review, as well as the organizers, participants and attendees of LatCrit II. I thank also the symposium authors for their contributions to LatCrit theory. Finally, I thank UCLA editors Jeffrey Reyna and Claudine Martinez for their leading and steady roles in this symposium, and Miami students Linda Leali and Sholom Boyer for strong and solid research support. All errors I share with Lisa.

SUMMARY: ... This symposium marks and celebrates the Second Annual LatCrit Conference, which took place in San Antonio during the 1997 Cinco de Mayo weekend. ... These essays thereby provide an example of, and a valuable springboard for exploring the parameters of possibilities and problematics that confront LatCrit theory in its efforts to define and promote social justice agendas in and through the production of critical legal scholarship at this particular point in time. ... The joinder of religion and sexuality at LatCrit II thereby opens routes toward a fresh point of entry for critical analyses of law and allows an early - and hopefully constructive - outsider analysis of the way this convergence engenders both possibilities and problematics for LatCrit theory and the multiply diversified communities that we purport to aid through our social justice activism and legal scholarship. ... Thus, rather than call for an outright rejection of organized religion as a site or vehicle of social justice work, this brief analysis of religion, Christianity and liberation theology aims to identify some points of entry for LatCrit efforts to help engineer an anti-subordination re/alignment of organized religions globally. ... But the operation of sexual orientation vis-à-vis religion in the setting of LatCrit II does provide an apt opportunity for the interrogation of the interplay between dissident sexuality and organized religion. ...

[*505]

Introduction

This symposium marks and celebrates the Second Annual LatCrit Conference, which took place in San Antonio during the 1997 Cinco de Mayo weekend. Being only the second time that this gathering had occurred, we arrived at the conference with the satisfaction that the diverse, self-selected scholars participating in this latest intervention in critical legal scholarship had managed a key act of continuity: we had managed to begin a tradition of annual gatherings. n1 The event was energized by the open-endedness and aspira
contours of the intellectual project that brought us together then and continues underway.

As with the first LatCrit conference the year before, this gathering took on a life of its own. Though the formal program provided a frame for our work in both instances, it could not contain the energy of these events. As with our first gathering a year earlier, this conference occasioned unexpected and difficult encounters with issues that undeniably are central to LatCrit theory's emerging agendas. n2 Our purpose in this Afterword is to explore the substantive, theoretical and political concerns underlying these encounters by focusing primarily on the essays published in this symposium: these essays were inspired by and reflect the live events that transpired at the LatCrit II conference, events that deeply affected and engaged everyone fortunate enough to have been there. These essays thereby provide an example of, and a valuable springboard for exploring the limits of possibilities and problematics that confront LatCrit theory in its efforts to define and promote social justice agendas in and through the production of critical legal scholarship at this particular point in time. n3

At the same time, this Afterword does not attempt to produce a comprehensive review of the symposium's essays or contents; this task is taken up in the Foreword that opens this symposium and in the introductions that open the three clusters of essays. n4 Nor do we seek to revisit and recount our (or any other) view of the conference's live proceedings; this backward-looking task threatens to eclipse forward-looking dialogue and substantive critique with an inconclusive and unproductive competition of subjective recollections. [506] Instead, we approach this Afterword as an opportunity to reflect on the advances, both theoretical and political, that were made at the LatCrit II conference, to suggest some lessons we think can and should be drawn from the conference proceedings and surrounding events as reflected in these essays, to map out new areas of substantive anti-subordination inquiry that have emerged from our collective efforts to create a LatCrit intervention in legal scholarship, and to nurture a diverse and lively LatCrit community of critical legal scholars committed to the theory and practice of transformative anti-subordination politics.

This is not to say that we - the Afterword authors - are of one mind on all the controversies raised by the conference proceedings as reflected in this symposium. Like all individuals, we approach these questions from our own distinct, individual, internally-conflicted, but often overlapping, positionality. These differentiated positions mean that we often interpret and evaluate events, ideas, and projects from different perspectives - even as our common interest in and commitment to the social justice values around which we aspire to contribute to the LatCrit project of consolidating an intellectual movement and constructing a nurturing community of scholars has allowed us to experience repeatedly the power of dialogue and friendship in the struggle to understand these differences, to rethink our assumptions, to modify our priorities and, ultimately, to transcend our contingencies through the resolution of our perceived or actual differences. Thus, while our anti-subordination "bottom line" has often turned out to be similar, those similarities may tend to obscure marked differences in our interpretive processes. These differences are worth acknowledging at the outset for what they suggest about the ways that contrasting perspectives can converge at the same anti-subordination conclusions for varied reasons, even as they remind us how "difference" can be elided if we focus only on the bottom line. In acknowledging our differences of position and perspective we hope to highlight, in a performative manner, the importance of community and friendship to the success of LatCrit theory as an anti-subordination project.

Obviously, critical theorizing and coalitional politics can proceed without friendship, but the aspiration to build a scholarly community while recognizing the values of friendship and solidarity requires much more work, with much higher pay offs, than merely strategic alliances. Though both types of alignments may have anti-subordination value depending on circumstance, the important point for us here is that our analysis, both in this Afterword and at all times, is not focused exclusively or even primarily on the existence or experience of difference as such. We strive instead to configure our encounters with difference as occasions for the self-critical exercise of LatCrit ideals, values and objectives by fostering constructive engagements with multiple and fluid diversities in the collective project of producing transformative anti-subordination theory and praxis.

We therefore address the works published in this LatCrit symposium with the same methods, concepts, techniques and politics espoused in LatCrit theory's previously published record. n5 That record evinces a multifaceted concern for the production of critical knowledge, for the cultivation of multiply diverse communities, and for the creation of egalitarian coalitions in the service of material, anti-subordination transformation. We thus endeavor in this Afterword to articulate a critical and self-critical analysis of LatCrit theory as anti-subordination scholarship; we invoke, and practice internally, the sort of anti-subordination analysis that serves as the substantive aim and anchor of LatCrit theorizing.
To that end, we focus initially on two substantive topics that, as this symposium reflects, were joined at LatCrit II with particular vigor: religion and sexuality. More specifically, we focus on the social and legal operation of religion and sexuality within and among Latina/o communities, as well as its impact on Latina/o relations with other outgroups in the United States and globally. n6 The exploration of this intersection can be particularly fruitful because religion and sexuality represent especially explosive fields of human experience and interaction. Yet the anti-subordination implications of this intersection are virtually unexplored in outsider jurisprudence. The joinder of religion and sexuality at LatCrit II thereby opens routes toward a fresh point of entry for critical analyses of law and allows an early - and hopefully constructive - outsider analysis of the way this convergence engenders both possibilities and problematics for LatCrit theory and the multiply diversified communities that we purport to aid through our social justice activism and legal scholarship.

Before turning to those issues and their relevance to LatCrit theory it bears emphasis that LatCrit II's discursive eruptions - as reflected in this symposium - properly are understood as a vital feature, and a strength, of the LatCrit conferences: this conference, like LatCrit I before it, produced lively and unanticipated forays precisely because LatCrit theory is committed to creating occasions for the engagement of difficult yet pending issues. n7 The theory about [*508] critical legal theory that underpins LatCrit theory calls for personal facilitation and collective accommodation of such moments. n8

On the other hand, the value of the eruptions indulged at scholarly anti-subordination conferences, and hence the in/appropriateness of their embrace at future LatCrit gatherings, should be measured by the degree to which they enlarge analytical perspectives, increase LatCrit solidarity, and enable us to understand more clearly the different interests, perspectives and normative imperatives that converge in our mutual, distinct but overlapping battles against various and intersecting forms of subordination. Thus, our objective is to suggest ways of cohering LatCrit theory's application of anti-subordination values by exploring, in a self-critical way, the broader significance of our discourse at LatCrit II and in this symposium. In this way, we hope to advance the development of LatCrit legal scholarship as an intervention designed specifically to produce knowledge that furthers the struggle for community and against subordination - even as we acknowledge and engage the complexities and controversies of the still-evolving LatCrit community.

This final point is the key to this Afterword. In our view, the development of LatCrit theory to date points to anti-subordination principles and practices as the basic measure of our work's integrity. To ensure the integrity of our discourse and community, as prior LatCrit scholarship has taught us, we must be self-aware, self-vigilant and self-critical. We therefore employ this Afterword to engage and highlight LatCrit scholarship as a form of, and a path toward, critical and self-critical anti-subordination theory and praxis. To do so, the Afterword divides into three parts.

Part I focuses specifically on developing a critical account of the role of religion in LatCrit practice and legal scholarship. In articulating what an anti-essentialist, anti-subordination stance toward religion is likely to entail in the context of LatCrit theory, we urge and proceed to illustrate the value of a two-tiered analytical approach, which grounds its reconstructive energies in and around insights developed in and through the practice of deconstruction. Deconstruction, we urge, is more than fad: as a critical methodology for revealing the disjunctures of justice and power, it is a fundamental [*509] prerequisite to a reconstructive engagement with religion precisely because the tendency toward essentialism is so routinely operative in the deployment of religious meanings and in mainstream accounts of the role of religion in Latina/o communities. This essentialism is reflected in discourses that center Roman Catholicism as definitive of the way religion is organized in Latina/o lives; it is reflected in discourses that center and sentimentalize the mystical and spiritual dimensions of personalized religious experience without engaging the institutionalized social power and political agendas through which organized religion has sought to promote and coercively impose its vision of morality; and it is reflected as well in discourses that invoke religion, but obscure contextual particularity and ignore the complex and enduring interpretative struggles reflected in the internal contestation over theological meanings. In this Part we conclude that religion, like any other social or political force or institutional arrangement, must be analyzed in terms of and engaged on behalf of the anti-subordination commitment that unifies the LatCrit movements' multiple diversities - with critical attention focused on whether and how religion's historical and contemporary agendas tend to promote and/or obstruct the liberation struggles and anti-subordination imperatives that have coalesced in and around the LatCrit movement.

Part II, we take up the question of sexualities, otherness and community in LatCrit theory, focusing particularly on the operation of sexual orientation diversities in the construction of LatCrit anti-
subordinating theory - as well as mapping out the multiply contested legal sites where the regulation of sexualities is interconnected with the hegemonic privileging of the male-dominated nuclear family. The purposes of this analysis are to mark some feminist and Queer intersections within LatCrit theory, and thereby to display the importance to LatCrit scholarship of multidimensional and interdisciplinary, as well as transnational, critiques that can aid our collective and individual appreciation for, and assessment of, competing claims about dis/empowerment. Continuing to emphasize context, particularity and anti-subordination purpose, this part of the Afterword elucidates specifically why LatCrit theory and heteropatriarchy are fundamentally incompatible contracts - regardless of whether heteropatriarchy is embedded in and propagated by secular or sectarian forces and institutions.

In Part III, we map out multiple sites where LatCrit aspirations to move beyond all forms of essentialism have revealed new anti-subordination problematics and possibilities. While the preceding parts employed chiefly religion, gender and sexuality to articulate an anti-subordination critique in LatCrit theory, this part highlights the status and progression, within this symposium, of inter- and intra-group issues that emanate from race, ethnicity, colonialism and language. Like any other pressure point, these points of potential conflict represent opportunities for the kind of explosive and enlivened creativity that we hope will help constitute new fields of conceptual breakthroughs, as well as new forms of cooperative interaction and increasing interconnection between different groups and individuals. This part consequently highlights advances made at LatCrit II as well as some of the issues that advances hold in store for the next wave of LatCrit discourse.

Furthermore, because we believe that the "economic tour" of San Antonio that was incorporated into the formal program at LatCrit II represents an appropriate instance and significant expression of LatCrit commitments to the inclusion and engagement of particularity as anti-subordination method, we devote the concluding portion of Part III to sketching issues of class and poverty in LatCrit theory. The economic tour of the local communities in San Antonio underscored, in many ways, the fact that Latina/o poverty and marginalization look and are different in different places throughout this country. By acknowledging and engaging the particularities of Latina/o poverty through these and other programmatic means, LatCrit conferences can manifest and strengthen LatCrit efforts to bridge theory and practice, even as we enlarge our collective understanding of the various ways in which economic marginalization has been organized in different parts of the country. This type of event, through its self-conscious engagement of the localities in which we hold our conferences, is a valuable step toward bringing into sharper focus the points at which local political and economic formations intersect with different historical processes of migration, conquest and/or assimilation endured by different Latina/o communities, as well as the material consequences of the differential treatment these communities have received from those in control of the United States government at the relevant moments in these histories.

The Afterword, in sum, surveys and critiques emergent LatCrit social justice claims and agendas to situate these developments within the short but growing record of the LatCrit movement. This careful but caring consideration has instilled within us a deepened appreciation for the possibilities enabled by the LatCrit commitment to an anti-subordination, anti-essentialist engagement with the particularities of multiple liberation struggles - possibilities reflected in the rich and multi-layered encounters with difference at LatCrit II. The benefits of our collective commitment to searching out and centering experiences and identities that power renders otherwise invisible we hope will increasingly enable the LatCrit movement to enjoy the intellectual, political and spiritual benefits of participating in genuinely creative new encounters on behalf of social justice for all.

I. Mapping the Power of Faith: The Role of Religion in LatCrit Theory as Anti-Subordination Legal Scholarship

This symposium shows that Professor Keith Aoki was quite prescient when he observed after LatCrit I that "issues of religion and spirituality are submerged not far below the surface of emerging" LatCrit scholarship. As the cluster of essays devoted to religion and LatCrit theory in this symposium attest, these issues promptly rose to the surface at LatCrit II. A truly remarkable feature of this cluster is that religion appeared nowhere on the planned program of the LatCrit II conference; these essays reflect the vitality and spontaneity of LatCrit convocations while advancing a collective LatCrit engagement of issues rooted in our divergent experiences with religion and perceptions of spirituality.

The essays in this cluster by Professors Valencia and Hartigan promote a view that one religion in particular - Roman Catholicism - is an especially salient, if not central or constitutive, feature of Latina/o life in this country as well as abroad. This religion's role in the creation and positioning of Latina/o communities in this culture and others is cast in both
A. Anti-Essentialism, Anti-Subordination (Again)

The first theme presented by this cluster of essays is the operation of religion in the lives of subordinated communities on at least two levels simultaneously: institutional or formal and personal or idiosyncratic. For instance, the Castro essay discusses the impact of Roman Catholicism as a key, institutionalized source of social, economic and political power in Cuban society. The Castro essay further focuses on the authors' personal experience with their religion and the dissonant voices within the Roman Catholic Church that in part sustain these authors' faith in that organization. As a set, these essays depict religion both as an enduring structural aspect of social life as well as a strikingly individuated human experience. They thereby counsel careful and critical attention to particularity in order to help theorize the different possibilities and problematics of each.

Related to this first theme is a similar tension between religion as theory and as action. The theory of Roman Catholicism, both Hartigan and Valencia assert, champions the interests of the subordinated; yet their invocation of liberation theology and other dissident voices against the official apTable of the Roman Catholic Church suggests that the Church's official anti-subordination theory is practiced more faithfully by the pockets of liberation dissidents that exist at the margins of the Roman Catholic church's formal tenets, organs or
programs both in the United States and abroad. This configuration of volatile variables under the rubric of religion or "Christianity" or "Roman Catholicism" illustrates, at the very least, that this church's institutional practices may diverge from its formal doctrines, even as both coexist with the dissident beliefs and practices of liberation theology.

As a set, the symposium essays presented in the religion cluster consequently remind the LatCrit community of basic and indispensable postmodern lessons: religion is not any one stable force across the vagaries of time and place. As the essays illustrate, religion encapsulates both the oppression practiced by Roman Catholicism's authoritative apparatus, as well as the resistance against such oppression mounted by dissident forces within that Church. Moreover, as the Ota essay displays most prominently in this symposium, religion encompasses manifold religious or spiritual heritages, both within and beyond Latina/o communities, including non-Judeo-Christian ones. Anti-essentialist approaches in critical legal scholarship are closely related to anti-subordination principles because anti-essentialism has been a means to mobilize of resistance against any imposition of subordination in the name of any religion or any other construct. The "religion controversy" of LatCrit II, as reflected in the essays published here, thereby serves as an indirect yet dramatic reminder of baseline lessons: LatCrit theory must take care to recognize and interrogate the nuances and the effects of all forces identifiable as "religion." Anti-essentialism and anti-subordination principles require that LatCrit analyses of religion, as with all hierarchies of social power, be consciously critical and self-critical. n25

B. Detecting the Bottom

One method of ensuring critical vitality is to focus critical analysis on the most vulnerable segments of the communities that LatCrit theorists profess to serve, and to do so cognizant of the past construction and present conditions of those communities. This method teaches outsider legal scholars to examine carefully and critically the sources, workings and effects of power by focusing on the sectors of society where power is wielded with most license and impunity. This technique of "looking to the bottom" to inform anti-subordination theory makes sense because "the bottom" is where subordination is most harshly inflicted and most acutely felt. n26 Thus, when LatCrit theorists examine any particular religious belief - in both its material and theoretical dimensions - we must take affirmative care to consider how the beliefs and practices of all "religions" actually affect existing patterns or distributions of power and privilege within, among and beyond Latina/o communities.

Looking to the bottom, however, is not the same venture as racing to the bottom; the former calls for a constructive focus on targets of concentrated subordination to inform the development of a reconstructive and transformative jurisprudence while the latter describes a destructive rush into competition over comPtitve victimhood. By "looking to the bottom" we strive only to ascertain how power structures relations of privilege and subordination within any given context so that the most vulnerable and marginal within that particular context are never left behind by our critical analysis and political interventions. This critical and self-critical stance is fundamentally different from the notion of racing to the bottom, which entails uncritical, abstract and often essentialistic assertions of quantitative or qualitative victimhood in competition with other claims of subordination. We reject such a race because it abdicates any responsibility for or commitment to the actualization of objective justice - defined here as the production of social justice for all. Indeed, by pausing consciously for contextualized inspection of the relative positions of privilege and subordination that are organized by and around the various issues raised during LatCrit II, we seek to illustrate in concrete terms the unique challenge LatCrit theory confronts: to organize its coalitional politics and theorize its anti-subordination agenda despite and beyond the complex intersections of privilege and subordination that may otherwise tear it asunder along the multiple fissures that too-often are produced by conclusory, abstract and uncritical assertions of comPtitve victimhood - whether real or apparent. n27
At the same time, the detection of subordination or "the bottom" can become a contentious and contested matter. A devout Roman Catholic's insistence on deploying church resources to promote patriarchy generally, and specifically to restrain legal recognition or individual avowal of reproductive rights, is "faith" to some and oppression to others. n28 The Roman Catholic Church's international campaign against formal, much less actual, equality for sexual minorities n29 similarly is perceived or described in varied, and mutually opposing, ways. n30 Given such conflicting perspectives, how should "the bottom" be identified - how should LatCrit theorists engage this apparent dilemma? n31

The first step, in our view, is to recall and marshal the strong LatCrit norm favoring respect for difference and diversity within our incipient community of scholars. n32 LatCrit theorists must take special care to balance competing or conflicting experiences, preconceptions or tenets against the bottom-line anti-subordination objectives of our movement. We must take care to distinguish aspects of personal experience, preference or agency against the needs and functions of our work in this particular place and time, and in light of the ways in which Latina/o and other outgroup communities presently are structured. We must exercise great caution not to invoke personal experience or sentiment in ways that devalue or marginalize group histories. We must, in short, decenter our personal predispositions and take a hard look at the effects that all "religious" practices visit on the most vulnerable members of the relevant categories, and even more so on the effects of our interventions in the extant status quo as organized around those categories. n33

The second and related step is to be always cognizant of ideology - even the forms that we tend to favor - and to inspect ideology's systematized re/production of predictable patterns of hierarchy within or among the relevant groups or categories of analysis. n34 Thus, rather than approach social and legal phenomena as random or individuated dots in a landscape, LatCrit theorists must inquire critically how relevant forms of ideology instill and institutionalize stratification. We must furthermore inquire how such stratification structures opportunity and distributes social and economic wealth for the benefit of some and to the detriment of many.

At the very least, this line of inquiry eventually but certainly leads the critical analyst to the proximate vicinity of "the bottom" within or among the relevant categories because these questions can help us distinguish among the insiders and outsiders that inhabit the categories under inspection. This line of inquiry additionally induces analysis sensitive to context and history, and to the particularity of systemized power relations in all situations. In this Afterword we apply this line of inquiry to situate and advance LatCrit theory - within the context of this symposium - as a form of anti-subordination legal discourse.

For example, "Latino" culture is repeatedly reported to constitute an especially virulent "macho" environment, and it is against this particular cultural status quo that we locate our interpretative encounter with religion as cast in the Valencia and Hartigan essays. These two essays invoke the image of the Virgen de Guadalupe to articulate the significance of Roman Catholicism to Latinas/os, deploying narratives in which the inspiration to persevere and survive the violence of poverty is organized around the adulation of, and devotion to, this particular Virgin. To be sure, veneration of the Virgin Mary has been a powerful force in the construction of transcultural meanings and values, and in the more specific but highly complex conception and organization of the socio-political roles of Latinas/os around the globe. n35 But these narratives make no effort to examine critically how the cult of the Virgin Mary has operated across time and space - from Medieval Europe to the New World, and throughout Mexico, Cuba, Puerto Rico and everywhere that the veneration of the Virgin Mary is culturally dominant. n36 Nor, additionally, do these essays undertake a critical examination of this Virgin's symbolic power, and how it is deployed by religiously or socially dominant forces simultaneously to rationalize and mystify the suppression, repression and persecution of female agency and sexuality. These two omissions represent serious lapses because they overlook how religious doctrine operates as a form of ideology that can engender inequality and create "the bottom" of categories gendered in part by religion and its symbols.

LatCrit anti-subordination methodology counsels a more critical and contextualized analysis of this Virgin and the ideology that constructs and sustains her symbolic power and cultural effects. Through the doctrine of the Immaculate Conception - the doctrine that bestows upon Mary the title of Virgin due to the virgin birth of Christ - Mary was spared the stain of original sin. Under the calculus of this doctrine, only a woman without sin could be the mother of God and only a virgin could be without sin. Thus, even as the image of this Virgin is elevated and venerated, the embodied human woman is devalued, despised and degraded in her failures to measure up to this image of gendered perfection. The control of women's agency, sexuality and virginity by men, even God's men,
therefore is not simply an ecclesiastical matter; control of female agency, sexuality and virginity has been claimed and exploited by men to control and exploit women physically, politically and economically in both Latina/o and other cultures. n36 The merger of secular and sectarian power in the hands of men thus has been used throughout history and is still used today to cast women, including Latinas, sharply either as virgins or whores, thereby constructing and sustaining an environment of androcentric control over both "public" and "private" spheres of human life, an environment that in design and effect curtails opportunities for women and aggrandizes them for men. n37 The failure to contextualize the image of the Virgin in its socio-cultural situation therefore causes these narratives to neglect considering how this image helps, among other effects, to perpetuate gender stratification within Latina/o communities precisely because they pay fealty to Roman Catholic beliefs. The uncritical nature of the narratives about the Virgin's role in Latina/o culture effectively transmutes these essays into accomplices of male supremacy in the name of religion.

To detect and intervene on behalf of those at the bottom, as these essays show by omission, LatCrit theorists must contextualize critical analysis by accounting for patterns of domination and subordination in the organization of social power among Latinas/os and other multiply diverse populations. To engage religion from an anti-subordination and anti-essentialist perspective, LatCrit theorists must examine critically how religion affects women's lives in relationship to men's lives, and how it affects white or middle-class or Anglo-American or heterosexual women's lives in relationship to black or Asian, indigenous or Latina or poor or lesbian women's lives. This sort of multidimensional interrogation is precisely what it means to account for gender, race, ethnicity, class and sexual orientation in the articulation of LatCrit theory; this sort of interrogation is precisely what it means to apply the lessons of postmodern analyses and outsider jurisprudence in LatCrit theory.

C. Locating LatCrit Analysis in the Material Realities and Historical Antecedents of the Here and Now

As illustrated by the forgoing examples, locating "the bottom" in a multiplicitous and intersectional world can become an exercise in ambiguity and contestation, a possibility exacerbated by uncritical and decontextualized approaches to LatCrit theory. The antidote is interdisciplinary, transnational, anti-essentialist analysis, requiring us to sift through the record of knowledge already adduced across boundaries of discipline, culture and perspective. n38 We must incorporate into our anti-subordination frameworks the personal experiences and the insights that inform them to sharpen, not dull, our capacity for critical understanding of the larger record of competitive knowledge also available to us. n39 We must focus on how "the bottom" - though variegated - is concretely constructed across different places and times given the actual particularities of the social, legal, political or ecclesiastical contexts under analysis. We must, in short, assemble and contextualize, as best as our conditions permit, the record of experience, and interrogate that record with all of our critical capacities, to imagine and devise compelling means of rectifying the material legacies of past or present social injustices.

To do so, we must start at the beginning; we must focus ourselves on the cultural, temporal and spatial context in which our [*522] analysis takes place: the United States at the millenium. n40 Bringing to bear insights that might include, but must be based on, a record more expansive than uncritical anecdotes, we must examine the organization and allocation of opportunity and equality in this country at this particular time. Observing the relative positions of competing religious beliefs in, and their effects on, this context, it becomes quickly obvious that the United States today and historically represents an undeniably Christianized culture; though the Constitution forbids the formal establishment of any religion as the state's formal creed, the Constitution also commands the state to respect the exercise of religious beliefs. n41 Today, the state accommodates religious exercise to a significant degree, n42 and due to the legacies of a complex history, it accommodates Christian practices more so than indigenous or other non-Western religions. n43

To start at the beginning of Western Christianity's religious, material and ideological dominance over the land now claimed and governed by this country, we note a coincidental but telling irony: that the site of LatCrit II - San Antonio, Texas - was conquered and appropriated from indigenous peoples by the Spanish crown in the name of Roman Catholic beliefs and imperatives. n44 Indeed, its very name continues to project that history and its continuing legacies of power and oppression. This exemplar of Christianity's effects on this continent therefore helps set the stage for an anti-subordination analysis of the status quo that since then has been normalized and coalesced into virtual permanence.

[*523] As a result of this history, Christian churches, as a group, today operate fully as part of this society's establishment. And, like the rest of the national
establishment, their possessions and activities permeate contemporary secular life: homage to their god is imprinted in the nation's coinage and expressed as the nation's motto, their prayers are recited in multiple socio-cultural settings and intoned annually to convene the nation's representatives in Congress, their (untaxed) properties stretch from coast to coast and occupy prime land valued at billions of dollars, their messages and images fill the public's airwaves from dawn to dawn, their sectarian holidays are promoted by businesses as economic events and celebrated by laborers as paid time off, and their dogmas and doctrines are invoked by the tribunals and lawmakers of the land to justify juridical and legislative acts of law and policy. Moreover, Christian groups are visible and vocal in, and they aggressively strive to influence the outcome of, current public policy debates that range from presidential elections to state or local referenda.

Thus, in myriad ways and due to numerous circumstances, Christian religious influence over this country and its laws is awesome, and it is exercised routinely and systematically to promote a particular view of the world. Given the totality of historical and present circumstances, the cumulative effects of Christianity on this land cannot credibly be said to represent egalitarian respect for difference, or sincere accommodation of diversity on any of the points implicated by the recorded dogma of the various churches spawned by Judeo-Christian imperatives.

As the essays in this symposium by community activist Luz Guerra and author Antonia Castañoeda jointly remind us, a ready and enduring example of Christian intolerance is the Roman Catholic Church's leading role in the colonization specifically of this continent: the properties, families and cultures of the peoples indigenous to this land were plundered, divided and persecuted in the name of Christian dogma by imperialist powers that neither knew nor wanted any separation of church and state. In particular, Roman Catholic and/or Christian royalty and clergy collaborated mightily to seduce or subdue, and ultimately to erase all traces of, indigenous civilizations and their traditions, including religious ones. While understanding that Christian missionaries sought to save indigenous souls around the world (regardless of the cost to those souls), and understanding that this global history is more complex than this Afterword possibly could reflect, critical candor nevertheless compels acknowledgment that the net effects of Christian presence in this and other non-European continents have been decidedly imperial: Christianity as an institution repeatedly has been used to justify and enforce the subordination of indigenous peoples, and again since then, Christian religions - and perhaps most egregiously Roman Catholicism - have expressed their power and purpose in manifold forms, using their accumulated social stature and influence to effectuate biases and pursue agendas that tend to increase the wealth and prestige of the European male (heterosexual) elites that invaded this continent half a millennium ago. Despite any self-serving verbiage to the contrary, Christian missionary zeal indeed has operated willingly as an arm of European invasion, conquest and hegemony as well as paving the way for brutal exploitation of indigenous peoples in the twentieth century.

Similarly, the history and legacy of organized religion in this context represents the introduction into this continent of compulsory heterosexuality - the edict that commands and extracts the surrender of individual agency in the formation of intimate bonds in the name of Christianity's seemingly insatiable appetite for procreation. Thus, the Roman Catholic missionaries that arrived on this land centuries ago set out to harness and reduce sexual connection to a means over which they and their sectarian ideology would lord: a means toward literal reproduction rather than toward human connection and mutual fulfillment. To do so, those missionaries labored systematically to destroy native customs of sexual equanimity, including the pansexuality that flourished among numerous indigenous nations at that time and that accommodated with respect and dignity same-sex as well as cross-sex unions. Moreover, this homophobic hierarchy of values and icons forcibly imposed and continues to inform and permeate the dominant psyche and axioms of this society and its laws in the repressive regulation of same-sex intimacies and families. Therefore, Christian institutions and ideologies rightly are held critically accountable both for the brutal imposition of heterosexism as well as for their continuing avid participation in the continuing prevalence of heterosexist supremacy in this place and time.

It bears emphasis that the status quo begun long ago continues to fuel today's enforcement of material and political stratification via the combined interests and forces of Eurocentric, heteropatriarchal sectarian and secular elites. As with the continuing effects of this nation's early decision to institutionalize racial slavery, the lands arrogated and the labor exploited by Christian-identified invaders during formative times and since then have created and entrenched a resilient and unjust political economy that prevails even today. This economy employs race, ethnicity, class, gender
and sexuality to help construct religion, and in addition employs religion to buttress social privilege that hinges on race, ethnicity, class, gender and sexuality.

Finally, LatCrit scholars need only trace the ebb and flow of religious referents in the constitutions and legal systems of different states in Latin America and throughout the Third World to discover and begin assessing how religious discourse operates even today to facilitate the mystification of socio-political hierarchies, the denial of fundamental civil and political human rights and the consolidation of repressive authoritarian regimes. n59 Thus, the domestic histories and [\textsuperscript{527}] legacies of subordination, coupled with the transnational and transcultural sweep of dominant religious organizations today, establish worldwide ambitions for sectarian ideologies that intentionally and simultaneously stratify men over women, Europeans over natives and straights over Queers. Organized Christian groups eagerly have rendered themselves adjuncts of the unjust hegemonies that still reign supreme in the United States and globally: androcentric, eurocentric, and heterocentric supremacies. The political mobilization of the Christian right in this country, which seeks to reimpose "traditional values" precisely to preserve such stratification, n60 furthermore makes attention to these historical and contemporary effects of religion, and to their domestic, cross-cultural and international comparisons, particularly pressing for anti-subordination theorists and activists at this time of backlash and regression. But to detect and aid "the bottom" of these intersectional and international categories of experience and opportunity, an analytically rigorous and intellectually honest LatCrit approach to religion must not only reckon with this record and its legacies, it must develop and deploy the strategic methodologies that will enable us to craft viable means of reclaiming religion as an affirmative force in the continuing quest for social justice across particularities of time and place.

D. A Two-Tiered Framework for Engaging Religion in LatCrit Narratives and Theory

This context and history advises that a critical anti-subordination engagement of religion in LatCrit theory necessarily would incorporate (at least) two steps of analytical development. This advice is highlighted by Professor Leslie Espinoza's essay, n61 which points out that LatCrit theorists in all instances face a two-sided task: first, recognizing oppression and, second, overcoming it. n62 To do so, [\textsuperscript{528}] LatCrit theorists must employ a two-tiered framework for engaging religion, or any other force, in LatCrit scholarship.

The first step is deconstruction - unpacking the ways and means of religion's historical and contemporary deployment to import and maintain social injustice along racial, ethnic, class, gender and sexual orientation lines. The second step is the act of reconstruction - reconceiving religion in egalitarian ways that avoid or minimize social injustice based on perceptions or realities of difference and diversity. From the deconstructive process thus follows the ultimate task of outsiders' jurisprudential work - building theory in the search for justice. n63 This two-step framework is the minimum required to vouchsafe the integrity of LatCrit theory's approach toward religion because it is designed to check an uncritical redeployment of existing power hierarchies. n64 Efforts to circumvent or truncate either step, whether witting or not, endanger LatCrit theory's capacity for the careful blending of "sophistication and disenchantment" n65 that outsider legal scholars already have shown is indispensable in avoiding lopsided or undisciplined anti-subordination theorizing.

This two-tiered framework for engaging religion in LatCrit theory of course tracks the stages of development already identified among other strands of outsider scholarship, and it also brings into sharp relief the important epistemological and political role of "stories" in various strains of contemporary critical legal theory. n66 Accordingly, this general framework includes as an initial phase the practice of legal storytelling of varied types to document the untold experience with law and social subordination endured by people of color and other marginalized groups. n67 But the primary function of [\textsuperscript{529}] narrative in outsider legal scholarship is to provide a point of departure for theoretical and doctrinal analysis and transformative intervention aimed directly at satisfying an indispensable prerequisite to our material goal: "understanding things not only about people of color but also about women, poor people, homosexuals, the physically disabled and other outsiders" that dominant institutions slight or ignore. n68 Through storytelling, interconnections in and between various particular experiences of subordination are rendered visible, enabling outsider scholars to see more clearly the conditions, practices and structures we must challenge and transform in delivering social justice for any group, as well as for all. Storytelling thus merits an expansive scope in LatCrit theory primarily because, and precisely to the extent, it advances critical analysis by revealing the interlocking dimensions of multiple forms of subordination. LatCrit theory, born of this and other
outside methods and insights, n69 has in its brief history manifested a solid commitment to the practice of anti-subordination theory through critical narrativity on behalf not only of multiply diverse Latinas/os but of other multiply diverse outgroups as well. We invoke and reassert that commitment now.

It thus is not entirely afield to question, in the context of this symposium, whether this very danger of performing an un/witting apology for an unjust status quo by engaging in essentialist, uncritical storytelling is exactly the danger potentially poised by the personalized yet generalized accounts presented in the Hartigan and Valencia essays. Though both essays rightfully remind us that religion is a complex force, both proceed to stress in uncritical terms why their preferred actors - the concededly dissident and relatively disempowered factions within this complex force - ought to be selected as representing the true or "essential" nature of that institution. Instead of pausing to explore the current impact and consequences of acknowledged religious oppression and injustice, both essays jump to reconstructive arguments urging LatCrit theorists to accept uncritically the pockets of valiant dissidents mentioned in their stories as the "true" representatives of Roman Catholicism, and to view their intentions for Latinas/os and other peoples as the "true" meaning of religion.

By dismissively acknowledging, but in fact failing to engage, the critical issues triggered by their narrative performances, these essays threaten, whether intentionally or not, to reproduce insider/outside dichotomies: namely, dichotomies that divide those who accept their representations of religion from those who don't. At the end of their stories, we know with confidence only that these [*530] two authors personally have experienced Roman Catholicism as a salutary force in their lives and that they lament that others have not, even though they acknowledge in passing the possibility that Christianity generally, and Roman Catholicism specifically, does not always operate as an affirming force. These two essays therefore suggest but fall short of showing us the power of narrative in legal scholarship. Though the descriptive features of the stories recounted may be moving to some, and perhaps self-indulgent superstitious sentimentalism to others, the more important point is that these essays fail to take the requisite next step: articulating in a critical fashion the theoretical value of the narratives told and the claims made. In fact, these essays fail completely to engage the many critical questions their narratives trigger.

For instance, these essays beg threshold questions about the kind of intellectual or cultural community their accounts are intended to nurture and sustain or to negate and suppress, as well as meta-critical questions about the performative impact their narratives are likely to have on the various overlapping communities that have engaged LatCrit attention and that are participating in the evolution and development of LatCrit theory. Their use of narrative also begs epistemological questions about the way that the meanings embedded in their stories should be interpreted, and their truth values measured, against competing stories, as well as against other types of discourses - such as legal doctrine, anthropology, political science, psychology, and historical analysis - that might be used to address the meanings referenced in the stories they tell. In this way, both essays effectively minimize deconstruction and rush to reconstruction.

However, this leap to reconstruction without deconstruction must be carefully and critically rethought. In our view, such leaps must be resisted; otherwise, reconstructive efforts will lack the insight and drive that only critical deconstruction, including critical narrativity, can instill in our efforts to re/build institutions and communities devoted to effectuating the egalitarian, anti-subordination ideals that LatCrit theorists purport to embrace and seek to promote. These essays thereby remind the LatCrit community (again) that the tendency to essentialism in legal scholarship remains a significant threat to the precision of our theorizing - a reminder that apparently is still needed even though essentialism's dangers already have been noted and urged within prior LatCrit publications. Thus, in tandem, these two essays should serve as a strong reminder of the care and caution LatCrit scholars should exercise when deploying narratives in critical legal scholarship. By way of contrast, essays that appear in the symposium's other clusters [*531] help to illustrate the potential of critical narrativity as method in legal scholarship.

For instance, Professor Hernandez-Truyol's essay employs autobiographical narrative to elucidate the gendered inequalities promulgated by Latina/o normativities. n70 The Hernandez essay, like the Hartigan and Valencia essays, centers personal experience as a relevant element in legal theory. But Professor Hernandez employs narrative to engage the connectivity and complexity of Latina/o and other outgroup social identifications, using the story as a springboard to theorize anti-subordination strategy, and to urge outgroup anti-subordination collaboration despite and through difference. The Hartigan and Valencia essays, on the other hand, employ narrative to intercede insistently on behalf of socio-religious forces that, as the foregoing account shows and the Guerra essay confirms, are a dominant and, on balance, oppressive feature of this continent's history and
heritage. n71 The Hernandez essay, while focused on the secular rather than sectarian forces that engender Latina subordination to Latinos and other men, serves as a useful counterpart to the uncritical use of narratives motivated by a zealous wish to "infuse" LatCrit theory with any particular brand of religiosity. n72

Similarly, the essay by Professor Chew employs autobiographical narrative to depict biological and environmental circumstances that interconnect Asian and Latina/o social experiences, identities, and positions. n73 This narrative enables Professor Chew to theorize how self-awareness combines with constrained agency to form networks of identification among individuals and groups. The Chew essay thereby points out how an Asian scholar's self-identification as a LatCrit theorist is an act of will, an election to struggle despite cultural, structural, and physical constraints toward self-determination on behalf of diverse groups and persons both domestically and internationally. This pithy essay effectively displays how the multiply diverse self-selected group of scholars that identify as LatCrit theorists have exerted our individual and collective will to oppose multifaceted forms of subordination in a multicultural world.

The essay by author Antonia Castaño explores autobiography, history and critical theory to conduct an anti-subordination analysis of Latinas/os in the United States, and to highlight especially the impact on Latina/o children of the conditions and needs produced by past and present subordination. n74 Covering and joining vast fields of time and space, this essay brings to the fore multiple issues - like language, culture, colonization, gender and class - that recur elsewhere in this symposium. This use of critical narrativity thus is sweeping, engaging and devastating.

The essay by Professors Ebben and Gaier similarly uses Latina narratives about identity formation and social positioning to track how the construction of legal education marginalizes specifically Latinas/os in Texas. n75 The focus on Latina experience culled from the interviews these authors conducted displays the importance of anchoring theory to actual living conditions. This essay's emphasis on the personal narratives of Latinas not only documents the particularity of lived experience, it also reminds us by example that LatCrit scholarship must focus self-critically on the way our work is likely to impact (or not) on the material transformation of unjust conditions if our discourse is to have social relevance and resonance.

Finally, the essay by Professor Gerald P. Lopez also can be situated loosely within this method. n76 This essay describes and dissects the methods and data of the Latino National Political Survey, effectively telling a story about Latinas/os living in the United States right now; like the Ebben/Gaier essay, this account of Latinas/os' lives reports and analyzes data that narrates the condition of a people. Recounting an empirical portrait, this essay thus can be viewed as a form of storytelling. And because this social narrative is told critically, and with the aim of advancing social justice, this essay performs the ultimate function of narrative in critical legal scholarship: uncovering the sources and structures of subordination in law and society to help dismantle them.

[*532] These various and varied essays employ different kinds and styles of narrative and address varied aspects of law and life, all of which are significant for, and if effectively employed can help to enrich, LatCrit theory. While we believe - indeed, know - there is a valuable role and much at stake in defending and continuing the use of various narrative styles in legal scholarship, as well as in the project of clarifying and disseminating ethical convictions and theological meanings, n77 these essays as a set illustrate an important and always potential shortcoming in, and hence a crucial lesson for, the future employment of narrative in LatCrit theory and outsider jurisprudence: a failure to connect expressions of personal identity or social experience to any substantive analysis of - or critical reflection about - their relevance to the broad range of socio-political, epistemological, ethical, methodological and legal issues that concern LatCrit theory can provide easy targets of criticism from skeptical or hostile scholars. n78 Without acquiescing to misguided points asserted by recent attacks on narrativity in legal scholarship, these essays, in their different approaches to and employment of legal storytelling, counsel extreme care in our use of narrative to articulate LatCrit theory.

Additionally, these essays, and their points of contrast and commonality, jointly display the fragile and tentative nature of the LatCrit enterprise and its likely valences. In particular, the uncritical interposition of autobiographical narrative in the Hartigan and Valencia essays leaves us to wonder whether their objective is to impel a collective LatCrit embrace of an institution with a historically and demonstrably eurocentric, androcentric and heterosexist ideology and agenda simply because some relatively disempowered souls here and there within the institution valiantly seek to resist its pernicious pro-subordination practices. While we applaud and support all such resistance, this use of narrative ultimately leads us to wonder whether the uncritical acceptance of (or apologies for) eurocentric, androcentric and heterosexist institutional biases can ever be said to aid
the reconstructive projects that await LatCrit theory, at least if we understand LatCrit discourse to be a form of anti-subordination scholarship.

[*534] This not to say that we are unaware or in any way deny the extent to which Roman Catholic or Christian identity has been and still is the basis of formal or functional persecution in various parts of the world. n79 Certainly, one fruitful trajectory for future LatCrit scholarship would focus on examining the configurations of power and privilege that drive the persecution of any Christian group in countries around the world, particularly if this analysis is linked to the articulation of a more inclusive and effective human rights agenda. n80 Given, however, the here and now in this country, and the history through which this here and now has been constructed, LatCrit scholars must continue our critical search for an anti-subordination comprehension of religion that does not ignore or dismiss the particular realities of this context - this here and now - as structured by historical and contemporary realities of politics and power through which organized Christianity has actively fomented and passively tolerated the imposition of hierarchy and subordination, both in this country and throughout Latin America.

Nor do we, by this anti-subordination critique of religion's operation in this symposium and society, mean to imply that LatCrit theory or legal culture ought to oppose or obstruct human spirituality and its expression. On the contrary, we think that anti-subordination principles require formal laws and social practices to honor the human capacity for spiritual experience and connection. In doing so, however, laws and norms should not be used to regiment spirituality or to repress spiritual diversity and agency. On this point, we agree with gay and feminist Roman Catholics, and other progressive Christians, who decry organized religion's policies precisely because they fracture the human potential to experience the spiritual by condemning non-procreational sexuality that nonetheless may be integral [*535] to human connection and expression. Because we believe that religion and spirituality can be affirming forces in life and society, as certain strains of Christianity already suggest, we believe that LatCrit theory, legal culture, and the state should promote and protect the opportunity of all humans to experience and express spiritual conviction in peaceable and egalitarian ways. To be constructive, LatCrit theory's engagement with the status quo of religion and spirituality must search for ways of reconstructing religion's application and operation as a social force and human phenomenon in this here and now, and in light of the historical antecedents that now have brought us here.

E. Liberation Theology: Exploring the Reconstructive Potential of Anti-Subordination Interpretation in Religion for LatCrit Theory

In developing a reconstructive project in and through an engagement with religion, it is imperative for LatCrit scholars to move beyond the sentimental dimensions of our particular experiences of religion to an analysis and exploration of theological concepts and their relevance to the anti-subordination project that drives LatCrit theory. This critical and self-critical stance toward theology is imperative because theological doctrines are repositories and instruments of social control: it is precisely because control over the dissemination of theological meanings creates political power that liberation theology - and indeed, the historic schisms that divided the Roman Catholic Church and produced, over the past several centuries, the proliferation of Christian churches - originated in contestation over theological dogmas. Moreover, the duration and intensity of these power struggles suggest the awesome stakes involved in control over theology and its meanings as a vehicle for the construction of social and political realities. While none of the essays provide any in-depth exploration of theological concepts, Professor Hartigan's reference to and treatment of the Catholic doctrine of Transubstantiation n81 does provide a means within this symposium of illustrating how the contestation over theological dogma and meanings is relevant to LatCrit theory's anti-subordination project.

Responding to a suggestion made in another place and time that Aztec civilization is one of some unspecified number of civilizations that are "not equal" but rather "clearly inferior" (presumably because Aztec civilization practiced human sacrifice), Professor Hartigan reports asking in that situation "just how [the Aztecs] were inferior to those of us who in our orthodox version [of faith] believe we eat the genuine flesh and drink the genuine blood of an executed [*536] Palestinian Jew?" n82 While the apparent intent here was to challenge the supposed inferiority of Aztec civilization by drawing a Pllel between Aztec sacrificial rituals and the Roman Catholic dogma that Christ is fully present in the Eucharistic sacrifice, n83 this casually dismissive reference to orthodox doctrine conjures up, but does not explicitly explore, key issues thereby triggered.

It is relatively easy in this place and time, due in large part to the historical bloodbaths that produced the separation of church and state and the secularization of a liberal society, to dismiss those elements of a creed that one deems unreasoned or unreasonable. Embedded in that dismissal, however, is the assumed capacity and
claimed authority to differentiate Truth from error, as well as to distinguish the "essence" of a faith from its historical and cultural contingencies or from its self-interested political and ideological manipulations. Yet one cannot unilaterally pick and choose among the dogmas of a church or the laws of a state without fundamentally challenging the claims to exclusive interpretative authority asserted and protected by the church whose dogmas - or by the state whose laws - one elects to reject. Nor can one claim interpretative authority for oneself and deny it to others without implicitly or explicitly invoking some justificatory distinction - some privileged access to Truth. This contest over the interpretative authority to evaluate and articulate - and even to enforce - dominant or definitive theological meanings is precisely the radically transformative phenomenon at the heart of liberation theology, much as the struggle over the interpretative authority to evaluate and articulate binding legal meanings is at the heart of LatCrit and other strains of critical legal theory.

Roman Catholic dogma, like the doctrines of Transubstantiation and the Trinitarian god, have been sites of such interpretative contestation before liberation theology's emergence. Indeed, the struggle over interpretation and application stretches throughout the history of that church, in part because these doctrines call upon the faithful to affirm the Truth of a reality that may defy reasoned analysis. Of course, the fact that a mystery of faith escapes one's analytical capacities is hardly a reason to reject its Truth, but the interpretative contestation provoked in and through the theology of liberation is born of a different conflict. It flows from the experience of a complete disjunction between the meanings inscribed in the doctrines of Christian faith and the lived reality of the subordinated faithful to whom these meanings are preached. This disjunction between lived reality and formal doctrine demands an accounting, and can explode of its own internal contradictions into the search for alternative meanings and toward the transformation of unjust material realities. Liberation theology is that explosion - the critical response of Christian social conscience to the questions born of the conflict between the formal dictates of Christian faith and the material realities from which they are proclaimed. These questions are fundamentally disruptive of inherited truths, as well as potentially revolutionary, precisely because they expose tensions and provoke further questions that, once noted, can only be resolved by oneself, for oneself. n84

In defending its dominant and exclusive interpretative authority, the Roman Catholic magisterium has sought to suppress such questioning. n85 It has deployed its Inquisitors and, on pain of excommunication, has called the faithful to accept as an article of faith that the dogmas of this church can be reconciled with justice and rea [*538] son. n86 Those who instead affirmed the dictates of their own conscience and clung to the justice and reason of their own experience were branded heretics, expelled from the community of saints, imprisoned, and tortured for the sake of their own everlasting souls and ultimate salvation. Against this long and complete backdrop, the historic conflicts over Roman Catholic or Christian doctrines, institutions and communities are worth exploring more extensively precisely because they can help LatCrit scholarship to develop a powerful psycho-social, historical and normative framework for combating the semiotic logic embedded in the systematic, institutional and symbolic assault on the ethical consciousness and moral agency of the human person in an unjust and deranged society - whether that society resides within or beyond the borders of this nation.

In Argentina, for example, the recent "dirty war" waged by military elites against the civilian population was, in the words of one of the junta leaders, General Videla, firmly grounded in "the Christian principles of Truth, Love, Justice and Liberty." n87 For LatCrit and other critical scholars, the immediate question is: What logic can sustain such a claim? It is the same logic that converts the socialist into a communist, the communist into subversive, the subversive into a heretic, and the heretic into the damned, who then must be purged from the community of the faithful lest the moral order collapse in error. But, again, what kind of logic is this? From an anti-subordination perspective, it is the pseudo-logic of entrenched privilege and raw power in defense of an established order that imposes hierarchy, confers status and wealth, and condemns to oblivion the human capacities to imagine, desire, and seek to manifest a moral, political or economic alternative to existing social injustices.

The legal and extra-legal regimes of oppression that were organized in and through the Argentine military's deployment of religious mysticism and its worship of a particular and peculiar version of "divine order" are by no means the only example ripe for LatCrit exploration of the social misery produced in and through the exploitation of ideologies that embrace, as sacred duty, the maintenance of a perpetual state of total war between the forces of Good and Evil. Early in this century the Ku Klux Klan chose some of Christianity's most sacred symbols and hymns to create antiblack, antisemitic, [*539] xenophobic solidarity. Klan use of the Christian cross and its chants was more than base exploitation of social symbols whose power resided precisely in their association with dominant religious sects. Championing white supremacy both through
violence and politics, the Klan over the years focused recruitment of its local leadership from the Christian clergy, which also served to proclaim the Klan's creed across the land with spectacular efficiency and success; counting on the prestige and respectability of churches and preachers, the Klan employed church ministers as a ready and willing social technology to inflict white supremacy from Sunday pulpits across the nation, in the process blurring for the better part of this century - and perhaps virtually beyond recognition - the distinction between hate and religion in this country. n88

Closer in time are the legal trials and tribulations of the Sanctuary Movement in the United States. Throughout the 1980s, this movement assembled a network of religious believers who sought to live their faith by providing refuge and sanctuary to Central American refugees fleeing political persecution and physical terror in their countries of origin: to them, it was painfully clear that the U.S. government was acting in violation of domestic and international law, both by supporting governmental terror in Central America and by denying its victims political asylum in the United States. n89 This history of civil resistance in the face of government criminality, illegality and impunity marks another site where LatCrit scholars could begin to explore critically what it means to claim or forsake the interpretative authority/duty to ascertain for oneself what moral truth demands in a society where the integrity of religious and social conscience is often more a facile platitude than a legal right. The record of the Sanctuary prosecutions launched by this nation's authorities to neutralize the rescue efforts of those individuals illustrates the power of master and counter narratives in political mobilization and legal adjudication, as well as the strategies through which the state, like organized religion, operates to maintain a monopoly [*540] on interpretative authority and coercive power.

The alignments of secular and sectarian ideology and power in these varied contexts give reason to pause for reflection and analysis: in Argentina traditionalist versions of Christian values were formally invoked to legitimize state-sponsored terror; in the United States regressive versions of Christianity were used to instigate and coordinate racial tyranny and, more recently, state power was deployed to suppress and persecute progressive versions of Christian values in support of an unjust order abroad. Clearly, these examples of religion's impact on culture and politics are not conclusive, but the complex alignments of secular and sectarian ideology and power in these varied contexts display remarkable consistency: in each instance organized religion and dominant social forces combined to reinforce, rather than to rectify, existing social injustice.

Because LatCrit theory professedly works to promote the vindication of basic civil and political human rights both domestically and internationally, the success of its development must be measured in terms of its practical and material contributions to this objective. Accordingly, LatCrit analyses must be dedicated to the creation of structural and legal conditions that will honor and promote, in fact, the freedoms of conscience and expression without which the most powerless among us are denied both the integrity of our ethical consciousness as well as the capacity to participate fully and freely in the evolution of a more just and egalitarian society. These notes consequently raise just a few examples of the legal sites where a more detailed and critical exploration, and a more nuanced and textured anti-subordination account, of the historic struggle over theological meanings, and the authority to interpret or enforce them, might enrich and inform the evolution of a compelling LatCrit scholarship.

F. Theological Meaning(s) in LatCrit Theory: Toward More Substantive Encounters

Equally important, but similarly neglected in any essentialist, uncritical encounter with religious power, is the very serious project of informing LatCrit scholarship with a genuine understanding of the theological meanings at the center of the interpretative and aspirational conflicts that currently underpin the articulation of liberation theologies. To invoke the mere existence of liberation theology is not the same, nor nearly as valuable, as exploring the substantive meanings and political implications of its substantive theological concepts. Nor does its mere invocation help us understand how the premises and concepts of liberation theology can guide the evolution of LatCrit scholarship in critical pursuit of its anti-subordination [*541] mission. To delve into these questions, we usefully can return to the doctrine of Transubstantiation.

Lost in any casual dismissal of this Roman Catholic orthodoxy are the anti-subordination insights that LatCrit scholars might obtain from grappling with the interpretative conflicts over the theological meanings and ethical imperatives embedded in the doctrine that Christ is fully present in the Eucharistic sacrifice. In the exercise of its interpretative authority, the Roman Catholic Church historically has condemned and steadfastly has repudiated "anyone who denies the body and blood, together with the soul and divinity of our Lord Jesus Christ and, therefore the whole Christ is truly, really, substantially contained in the sacrament." n90 The Catholic Church has, through the centuries,
maintained this dogma as an article of faith against the rebellions of secular reason. Accordingly, the Church proclaims that in the sacrament of the Eucharist all are called to be nourished, not merely by inspirational symbols or ritualistic references to events that occurred in another place and time, but by the real or literal presence of the God-Christ incarnate, whose ultimate self-sacrifice is eternally repeated via ecclesiastical ritual in order to make available the immortality promised through communion with God to any and all who choose to eat his body and drink his blood in the fellowship of Christ.

What liberation theology reveals is the ethical imperatives and the abundance of theological meanings that emerge when we ask what this doctrine could possibly mean "from the standpoint of a humiliated race - the Amerindians, the marginalized, women, the hopeless...." n91 From the perspective of the poor and others at the bottom, a non-theological response to this question might be that it doesn't really mean much. In this vein, the anthropologist Marvin Harris writes as follows:

Protestant and Catholic thinkers have spilled much blood and ink over the question whether the wine and wafer are transubstantiate into the corporeal substance of Christ's blood and body. The real significance is that by spiritualizing the eating of the paschal lamb and by reducing it to a nutritionally worthless wafer, Christianity long ago unburdened itself of the responsibility of seeing to it that those who came to the feast did not go home on an empty stomach. The point... is that the nutritive value of the common feast is virtually zero, whether there is transubstantiation or not. n92

This disjuncture between religious and material realities is precisely the space that liberation theology occupies and attempts to bridge by challenging Christians to attend to the social, as well as the spiritual, needs of others. For LatCrit theory, this space is critical: the question for LatCrit theorists in examining any theological dogma or interpretation is whether it creates accord or discord between religion and the struggle for liberation from all forms of subordination. Critical reflection on this question should produce an analysis that clearly and appropriately differentiates the two different "Christian" types of effects and relations, and it is to these issues that we now turn.

The emphasis liberation theology places on the material practices Christ is said by Christianity's own Bible to have demanded of those who would follow him helps to ground and guide such critical reflection. In word and deed Christ instructed his followers "to meet the material needs of the hungry, the thirsty, the stranger, the naked, the imprisoned" n93 - that is, to live as and among the poor and despised. Reflecting further in this vein, theologian Mark Taylor suggests how the doctrine of Christ's real presence in the Eucharist challenges the tendency both of the formal church hierarchy and of the comfortable or unaware believer to spiritualize the act of communion in a way that displaces material exigency and breeds complacency among well-fed Christians. The temptation "during times of intense concentration, with bowed heads and bended knees" to look inward or upward in search of "an ascendant spirituality that lifts one above the fray of material struggle and practice" abstracts away the imperatives of a praxis reportedly dictated by the Christ they profess to worship. n94 In the Christian Gospels, after all, Christ did not offer his disciples symbols of food to eat; rather he gave his life's flesh and blood so that others might live, and he calls emphatically upon his followers on Earth to remember and participate personally - in the flesh, as much as in the spirit - in the hard and never-ending work of materially feeding the hungry among us.

Through its efforts to articulate and practice a grounded response to this recorded mandate, liberation theology creates a new possibility: an approach to Christ's teachings markedly different both from the anthropological posture of distanced curiosity and from the traditional stance of other-world mysticism and ritualistic formalism adopted by the institutional hierarchies of the Roman Catholic Church. This new response pointedly calls on Christians everyday to reconcile their sacramental rituals with the ethical imperative to engage in emancipatory material practices, a reconciliation without which the Eucharistic celebration becomes an empty symbol of nothing much but hypocritical mystifications. n95

[543] While these few paragraphs hardly capture the abundance of meanings embedded in interpretative struggles over the doctrine of Christ's real presence in the Eucharist, they do provide a way to illustrate how a genuine, substantive encounter with liberation theology might enrich the work of LatCrit scholarship as it struggles to transform the relations of domination and subordination that are institutionalized by legal doctrine, enforced through legal process and legitimated through legal discourse. These illustrative notes depict a ready connection between liberation theology and outsider jurisprudence: both embrace and espouse social justice causes and seek material transformation of unjust conditions. From this perspective, the biblical message posited by liberation theology mandates the same sort of anti-subordination praxis that also drives LatCrit theory. This message of
liberation, however, is routinely suppressed in the actual practices of organized religions and the comfortable bureaucracies that activate religion in order to entrench human stratification, much as it is suppressed by the organs and agents of the state in secular contexts. The suppression and perversion of this liberation imperative therefore is the point of our critique of organized religion in this Afterword, and this point is the one we regard most relevant for legal scholars who profess to write about religion from an anti-subordination perspective.

In sum, we agree with the implicit message of the Hartigan essay: liberation theology does provide a powerful wealth of interpretative, analytical and imaginative resources that can help LatCrit theory challenge the flaccid, facile incantations of so-called Christian values expressed in contemporary public discourse. At the same time, failure to engage liberation theology's substantive contents, or to make any effort to illustrate with any degree of precision its relevance to the anti-subordination project of LatCrit theory, comes dangerously close to sentimentalizing the fundamental challenge that liberation theology directs at the structures of domination and privilege in which both the laws and the lawlessness of the powerful are so deeply implicated. Moreover, we urge that liberation theology's preferential option for the poor and oppressed - those at the bottom - as well as its critique of structural violence, are especially powerful tools for developing a critical analysis of the substantive [*544] categories and interpretative methodologies that dominate Anglo-American legal consciousness. n96 Latina/o communities need more than mere invocation of liberation theology as positive Christian example: anti-subordination calls for LatCrit production of new legal meanings enriched and informed by the theological meanings and ethical imperatives increasingly made manifest in and through the irruption of the many at the bottom - the poor, the oppressed and the colonized - onto the pages of history.

This brief discussion of a few Christian doctrinal beliefs and actual practices referenced by the symposium essays helps to make more concrete the various discontinuities that anti-essentialist and anti-subordination LatCrit analyses of religion must engage with critical and particularized care. These discontinuities, as we explained earlier, include the divergence of the institutional and the individual, the theoretical and the practical, and the authoritative and the dissident, which may tend to be collapsed in uncritical evocations of religion as individuated human experience. n97 But as we just noted, this brief discussion only addresses a small portion of the much larger, and very important, architecture that designs and deploys organized religion as a powerful force in the construction of Latina/o and other communities around the globe.

This brief discussion thereby calls for critical and caring analyses calculated to align the power of organized religions with the anti-subordination struggles of oppressed peoples around the world. To do so, as this discussion illustrates, LatCrit scholars necessarily must take special care to avoid even unwitting redeployments of this power in ways that reinforce or reify its oppressive characteristics. Thus, rather than call for an outright rejection of organized religion as a site or vehicle of social justice work, this brief analysis of religion, Christianity and liberation theology aims to identify some points of entry for LatCrit efforts to help engineer an anti-subordination re/alignment of organized religions globally. We hope that this discussion will help spark the imagination of LatCrit scholars, thereby promoting a collective and critical LatCrit engagement with this powerful and important force that profoundly affects anti-subordination alignments in this country and others. n98

[*545] Finally, while in this Afterword we have centered the form and style of liberation theology that emerged from and speaks most directly to the conditions of Christian Latinas/os, particularly in Latin American countries, we have done so only to engage critically the ideas or forces referenced in the preceding discussion of religion within this symposium. However, in addressing the general questions we posed immediately above, LatCrit scholarship should note as well the existence of, and explore the emancipatory meanings articulated in, or the potential implied by, other subordinated theologies among Latina/o communities, such as Santeria, as well as among various subordinated groups in this country and abroad. n99 As the Ota essay usefully reminds us, religion's tracks are imprinted across the globe; n100 critical and compitive charting of diverse religious forces or experiences can only enlighten LatCrit understanding of religion as a tool of oppression and/or liberation. Moreover, in taking an expansively transnational and transcultural view of the interpenetration of law and religion, LatCrit theory will be manifesting and fulfilling its commitment to intra-and inter-group experiences, relations, and aspirations. n101 In doing so, LatCrit theorists additionally - and most importantly - will be producing a capacious and aggressive body of sharp anti-subordination scholarship.

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II. On Sexuality, Otherness and Knowledge: Difference and Solidarity in LatCrit Theory Through Anti-Subordination Practice

As the above discussion of religion and its intersections with law, culture and power shows, LatCrit theory’s approach to the issues that define and confine the social and legal positions of Latinas/os and other outgroups in this country and beyond must be approached with critical attention to context, particularity and purpose - the purpose at all times being to transform the material conditions of social and/or legal subordination. In this Part of the Afterword, we turn to these interconnections in the construction and operation of heteropatriarchy within Latina/o communities. More specifically, we now turn to the construction and operation of androsexist and heterosexist imperatives through the forces that combine to de/legitimate individual or group agency in intimacy and family and, thereby, to delineate communities pervaded and governed by heteropatriarchal beliefs, norms and rules. These forces, as we explicate below, produce a political economy that occupies and controls vast domains of life and law. These domains persistently straddle "public" and "private" spheres in mutually-reinforcing ways and toward mutually-reinforcing ends - ways and ends that reproduce otherness, fragmentation and dis/empowerment through the validation or imposition of hierarchical values and dictates. These dynamics and effects, as we argue below, are antithetical to anti-subordination principles and objectives, and therefore are properly targeted for critical scrutiny and political resistance through LatCrit theory and practice.

A. The Operation of Sexual Orientation Diversities in the Construction of LatCrit Theory and Community

As the preceding discussion urges, any anti-subordination analysis of religion must confront the implications for sexuality and its regulation when dogmatic power is exercised by churches or sects that wield considerable civic influence. n102 It thus should come as no surprise that the vocal expression of minority sexual orientation identities were central to the so-called "religion controversy" at LatCrit II. n103 What is surprising is that this crucial detail, unlike others that transpired at the conference, are not significantly repressed in the essays inspired by that event and comprising this symposium: the Ota essay is the only one that unfolds a sustained critical discussion of sexuality, religion and LatCrit theory. n104 Responding to this gap, the Afterword next takes up the role of sexuality and sexual orientation issues in LatCrit anti-subordination analyses of religion and social injustice.

The opening point is that the expression of lesbian, gay or bisexual identity in this context should not be mistaken for a more general or blanket oppositional juxtaposition of religion and "sexual orientation." The Roman Catholic Church, like other organized sects, includes within its ranks openly lesbian, gay and bisexual adherents. n105 The Roman Catholic Church, moreover, also includes within its ranks clergy and other personnel that are relatively disinclined to participate in anti-gay politics. n106 In this country and beyond, it is plain that members of sexual minorities and of this particular church do not monolithically stand outside of, or in opposition to, each other.

But the operation of sexual orientation vis-a-vis religion in the setting of LatCrit II does provide an apt opportunity for the interrogation of the interplay between dissident sexuality and organized religion. From an anti-subordination perspective, it is heartening that in recent years some organized Judeo-Christian churches, other than the Roman Catholic Church, have begun rethinking and rescinding official doctrines that condemn same-sex unions, families and cultures. n107 But for the most part, the current official position of most organized religions in this country remains unabashedly heterosexist. And despite the pockets of exceptions cited in accounts like the Hartigan and Valencia essays, n108 the historical and current official beliefs, as well as the routine practices, of the Roman Catholic Church continue to be stridently homophobic and sexphobic. n109 On the whole, then, the ideology and power of organized religion in the contemporary civic life of this country remains an undeniable impediment to the equality quest of multiple diverse sexual minorities. This power and its systematized effects must be acknowledged, confronted and resisted in all of their forms if LatCrit theory’s anti-subordination stance is to be more than a pose.

To do so, LatCrit analysis of religion must be relentlessly multidimensional, as the essay by Professor Ota illustrates: Professor Ota projects substantive concerns not only about the subordinating effects of current religious alignments regarding sexual orientation, she combines with that critique a similar concern over gender and race, and over ethnic and cultural biases, that are encapsulated in, and perpetuated by, certain sectarian customs. n110 Institutionalized religion, she effectively reminds us, can be organized and practiced to dovetail with the promotion of patriarchy, homophobia, white supremacy and eurocentrism all at once. And this point

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is relevant to LatCrit theory's anti-subordination commitment to the extent that the richest and most powerful organized religions in this country and elsewhere indeed are patriarchal, homophobic, white and eurocentric institutions, or in fact aligning themselves with the forces that maintain those supracies. We therefore turn now to a critical consideration of these questions by shifting our focus more specifically to the multidimensional dynamics that produce the formal families that religious ideology prefers, dynamics that simultaneously establish both exclusions from such families as well as hierarchies within them through the convergence of various biases.

B. Sexuality, Religion, and Family: Marking Feminist and Queer Positions in LatCrit Theory

In further examining the intersections of religion and sexuality, LatCrit scholars should take care to acknowledge and engage particularly fertile sources of critical insight: the understandings, methodologies and liberation aspirations expressed in Critical Race Feminism n111 and Queer legal theory. n112 Taking seriously the critical perspectives and substantive claims that women of color and sexual minorities have increasingly articulated in their demands for autonomy, dignity and self-determination is and must remain a central theme in the evolution of LatCrit theory - again, if LatCrit theory is to remain true to its expansive and egalitarian anti-subordination commitments. Taking these aspirations, demands and achievements seriously, in turn, counsels us to take a critical stance toward religion precisely because religion continues to play a fundamental role in structuring expectations and mystifying practices that restrict these groups' autonomy, repress these groups' agency and legitimate specifically the persecution and expropriation of women's sexualities - whether those sexualities are heterosexually, homosexually or bisexually oriented. n113

Drawing on the substantial body of analysis already developed by feminists and critical race feminists, as well as by lesbian, gay and bisexual theorists, LatCrit scholars could further our collective understanding of the intersections between religion and sexuality by examining how religious norms and beliefs intervene in the legal and cultural processes by which intimate relations are regulated. The threshold inquiries for LatCrit theory include: how and where - that is, through what legal institutions, substantive doctrines, procedures and aptitudes - do religious beliefs or norms operate within the regimes and discourses through which sexualities are regulated? Similarly, how does the regulation of human intimacy operate as a means of concentrating and skewing power, privilege and opportunity? Or, conversely, how does the religious character or influence of such regulation impede and/or buttress patterns or structures of social and legal subordination?

Certainly, religious beliefs about the nature of the family, gender, intimacy, the role of women, and/or the meaning of sexual morality have played an integral role in legitimating coercive legal interventions against, and imposing substantial social disabilities upon, women for the benefit of men and on sexual minorities for the benefit of the sexual majority. Indeed, religious ideology - served up as the universal imperatives of morality and social order n114 - is pervasive in legal rhetoric and makes regular appearances in rationalizing the control and suppression of women's and sexual minorities' sexual autonomy; for example, through the imposition of legal disabilities on illegitimate children, single mothers and welfare recipients, n115 and through the selective validation of anti-sodomy statutes. n116 This array of regulatory schemes operates at once to create insiders and outsiders, and to establish relations of privilege and subordination along multiple, distinct and overlapping axes.

As Professor Novoa's essay illustrates within this symposium, n117 family law provides an especially relevant legal site for exploring how the regulation of (compulsory hetero) sexuality is embedded in and reflective of a broad range of social, cultural and religious norms, assumptions and objectives. These norms, assumptions and objectives may be double-edged in some specific instances, as Professor Novoa shows. On the whole, however, these forces operate in inter-dependent and mutually-reinforcing ways to privilege overlapping and intersecting groups of men and heterosexuals at the expense of women and Queers through the construction and compulsion of the "companionate" family that today's conventions regard as traditional.

As Professor Novoa points out, family arrangements today are based on "domestic systems that created or expanded the economic empire of the "Founding Fathers,' the white landed males of the colonial northeast." n118 Moreover, Professor Novoa continues, legal recognition and cultural valorization of the "nuclear" form of "household" so common in recent times "ignores the multitude of cultural traditions in the United States which extend the family both by horizontal and vertical' kinship. n119 Rejecting any aspiration to this "limited and unrepresentative" construction of the family, n120 Professor Novoa condemns the law's complicity in the maintenance of family units tailored by socio-economic hierarchies - hierarchies in turn tailored by...
race, ethnicity, gender, sexual orientation and other sites of dis/empowerment.

Using herself as example, Professor Novoa acknowledges the virulence of patriarchy in Latina/o and Anglo families, and its impact both on the private as well as the public activities to which she (or her mother, for instance) could aspire. n121 She furthermore recognizes the interplay of family and market in the maintenance of gender hierarchy. n122 Recognizing how patriarchy both produces families as well as the hierarchies that inhabit and delimit them, it thus is somehow odd to find totally omitted from this analysis any recognition of heteropatriarchy's total exclusion of same-sex partners from the domain of the family. We thus undertake a critical analysis of the family that begins where this essay ends, and that we hope will mark some Feminist and Queer sites within LatCrit theory for further critical investigation and exchange.

C. Deconstructing Heteropatriarchal Family Structures: Joining LatCrit, Feminist and Queer Anti-Subordination Projects

From an anti-subordination perspective, the relatively recent institution of the male-dominated nuclear family, as it is legally defined and culturally represented, has been a crucial location where public and private power has converged to organize, legitimate and enforce relations of domination and subordination: not only are gays and lesbians denied access to the many state-sponsored benefits and privileges that are allocated, vested and subsidized by reference to a legal form that privileges the heterosexual marriage of a man and woman as the central unit of the family, this legal form also subjugates the woman to the man. n123 Additionally, and recalling the cultural heritage and context of this social order, dominant religious conceptions or imperatives regarding the control of marriage and sexuality have been used to construct and police racial fault lines on behalf of white supremacy, until relatively recently with the full force and complicity of the law and the Constitution. n124 Thus, even though the institution of companionate (heterosexual) marriage no doubt has provided solace to some, as Professor Novoa's testimonial illustrates, the heteropatriarchal structure of rights and obligations embedded in and established by legal marriage, and the cultural expectation that women (and men) can and should conform to its dictates or be penalized, have been central to the organization of in/formal racial, gender, class, sexual orientation and other hierarchies, and to the legitimation of social and legal systemic violence directed at various kinds of nonconformists. n125

In examining, from an anti-subordination perspective, the role of religion in structuring human families and sexualities, a key question must be whether religious images and beliefs tend to - or can be made to - promote human agency, emotional happiness and spiritual fulfillment in egalitarian ways: do they enable the evolution of new ways of understanding sexual desire and connection, and of practicing the mutual interdependencies that intimacy inspires and impels in humans, or do they operate to obscure, mystify and sublimate the sexual oppression, repression and real violence that is too often centered in and around the "traditional" family? n126 This question asks LatCrit theorists to resist both the uncritical acceptance and uncritical rejection of religion as a social force and asks us instead to assess critically religion's effects in this here and now. Returning again to the image of the Virgin Mary in Catholic dogma, this question might be reformulated as follows: do the meanings embedded in the image of the Virgin tend to rupture or reinforce relations of subordination in the way that human sexualities are understood, experienced and regulated? Answering this question requires, among other things, a critical analysis of the cultural and religious scripts that women and sexual minorities - those at the "bottom" of heteropatriarchal hierarchy - are called to enact or accept through the deployment of this image.

More concretely, this line of inquiry requires critical analysis of the way that Virginal scripts - such as sexual abstinence and maternal self-sacrifice - tend to structure relations between the women who perform them and the men who police their performance. It requires critical analysis, as well, of the more fundamental ways in which the semiotic logic of this image structures our understandings of the relationship between men and women, male and female, the masculine and the feminine, as well as the relationship between the spiritual and the sexual. As venerated as Mary may be, how do our cultural meaning systems and social practices reflect and articulate the dichotomization of sexuality and spirituality that is explicitly embraced in venerating the human impossibility of a virgin mother. n127 What, additionally, is the semiotic logic expressed through the exclusion of the feminine from the image of God? Elevated as mother, most exalted among women, the Virgin Mary nonetheless is not present in the Trinity worshipped by that religion - excluded from the internal communion of the Father, Son and Holy Spirit, she is subordinate even to her own son. n128 This configuration constructs the Virgin - and symbolically,
doctrinally and ideologically all "women" - as both insiders and outsiders at once, but always as subaltern. This insider/outside dynamic is similarly reflected in the larger ideology of religion and its part in the production of cultural scripts for sexual minorities. Like women, though in different ways, sexual minorities are positioned as outsiders in relation to the "family" by and through the interaction of religion and culture, and this interaction is evident in the substance and process of the law. Religiosity not only permeates Anglo-American legal doctrines and discourse about family, but legislatures and tribunals often cite religion to enact or uphold the legal imposition of heterosexist ideology and privilege through the activation of both criminal and civil law norms. n129 Legal culture thus relies explicitly as well as intuitively on religion to force and justify the exclusion of sexual minorities from the nation's civic, social and economic life. The exclusionary status quo and history of this time and place show that sexual minorities are subordinated through the legal and cultural applications of religious precepts in the construction and operation of the traditional family. This subordination is effected and maintained, as well, by the zealous participation specifically of organized religious groups in promoting the continued hegemony of the heteropatriarchal family and its use in organizing and regimenting American society more generally.

Finally, from a LatCrit perspective, an anti-subordination analysis of these issues must also address their transcultural or transnational dimensions. The acknowledged centrality of international law and human rights advocacy in LatCrit theory offers important additional perspectives. n130 LatCrit scholars can use these perspectives to develop more comprehensive understandings of both the way religious norms and practices collaborate in the legal imposition and regulation of (compulsory heterosexual) sexuality and the way this particular law sexual regime intersects with other social and cultural processes and legal institutions to maintain class, race, sexual orientation and gender subordination, both domestically and internationally. These cross-cultural interventions by LatCrit scholars are important to critical legal theory in general because they represent a substantive expansion and significant contribution to existing discourses: while the feminist movement in the United States has made significant progress in identifying and revealing the interconnections between women's subordination in the family and their subordinated status in public and private institutions beyond the family, the analyses and reform agendas pursued by those at the "top" of this movement - white heterosexual middle-class feminists - do not consistently address the particularities of those at the "bottom" of its constituencies, including Latina and other non-white/Anglo lived realities, either in the United States or throughout Latin America and the globe. n131

D. Universality Through Particularity: Gender, Sexuality and Class in LatCrit Theory

Addressing these manifold particularities and their socio-legal implications for anti-subordination analysis is, as Professor Luna so effectively urges in her contribution to this symposium, an imperative for LatCrit theorists: an imperative to seek social justice by finding the universal in the particular and the particular in the universal. n132 By engaging and expanding feminist legal theory from a cross-cultural and international perspective, LatCrit scholars can contribute to the further evolution of feminist theory and reform strategies; by challenging feminist legal theory increasingly to take into account the cultural, ethnic, racial and other differences between women, including differences in the ways women conceptualize liberation under different circumstances, LatCrit theory can foster critical appreciation for the differential positions of powerlessness from which multiply diverse groups of women struggle to attain dignity and agency. And in adopting an international and cross-cultural perspective, LatCrit scholars will of course confront the need to develop new anti-subordination strategies that take into account the different socio-legal contexts in which particular regimes of subordination operate.

For example, LatCrit theorists might explore the way religion, ideology and culture participate in the formal legal subordination of (presumably or compulsorily) heterosexual women in Latin America and elsewhere, producing complex socio-legal regimes like the Guatemalan Family Code. This code provides that married women can accept employment, practice a profession, accept a public office or engage in commercial activities only when such activity does not interfere with their child care obligations and other domestic responsibilities. n133 Additionally, even when a wife's outside activities do not interfere with her domestic responsibilities, Guatemalan law enables the husband to veto his wife's involvement in activities outside the home, so long as he earns enough to support the family and his reasons for opposing her outside activities are deemed reasonably justified - as interpreted by a (probably male, heterosexual and at least nominally Roman Catholic) judge. n134

In so prescribing, Guatemalan law does more than simply place in starker relief the gendered stereotypes and traditional family roles rooted in heteropatriarchy that prevent women from participating fully and freely
either in the public or private spheres of human life and interaction. This statutory regime also presents a direct opportunity, obligation and challenge for LatCrit scholars to recognize the universal imperatives of liberation that are implicated in the particularities of women's legal and social subordination within the Guatemalan family structure and, by implication, in any other "particular" situation. Confronted by the provisions of this particular legal code, LatCrit scholars are called to consider and decide whether and/or how we will address such particularities in our critical theory [*557] and anti-subordination practice: How important, after all, are the particular provisions of the Guatemalan Family Code to the articulation of LatCrit theory, or even to the development of LatCrit social justice agendas?

Our answer is this: addressing these and other particular provisions is central to the development of LatCrit theory, precisely because addressing such particularities is, as Professor Luna urges, a way to enrich the substantive insights and to leverage the political impact of LatCrit theory both as discourse and as community. n135 By engaging these particularities, we thereby operationalize our anti-essentialist commitments in and through the efforts we make to understand and dismantle the particular instances of subordination established and enforced through this or, for that matter, any other particular legal regime. It is precisely, primarily, and perhaps only through an increasing investment in identifying, analyzing and dismantling particular instances of subordination that LatCrit scholars successfully will avoid the essentialist tendency to seek universal truths in generalities and abstractions, rather than seeking universal liberation in and through the material, though limited, transformation of the particular and the contingent.

To make the importance of specificity and multiplicity in LatCrit theory's anti-subordination critiques even more explicit, consider how a sustained effort to analyze the particular context of subordination in which the Guatemalan Family Code operates, in turn, reveals otherwise invisible interconnections in the production of subordination, thereby providing a critical perspective on the normative validity of religious prescriptions and cultural expectations about the role of women and men in the heteropatriarchal version of the family. The restrictions that the Guatemalan Family Code imposes on women's freedom to accept employment, practice a profession, accept public office or participate in a labor organization effectively subordinate women's rights of free association to the husband's prerogatives and discretion as head of "his" family - ostensibly due to the state's interest in ensuring that children receive necessary care, attention and supervision. To this extent, the Code reflects the same gendered stereotypes invoked in religious prescriptions about the role of women in the family structure - prescriptions already repeatedly and effectively challenged in feminist theory. This overlap thus marks a shared interest in social justice for "women" among LatCrit and feminist theorists.

But an anti-essentialist, anti-subordination perspective on the particular context of subordination experienced by Guatemalan "women" must situate its analysis even more broadly to sharpen its [*558] critical edge and expand its practical or political impact. These persons, situated at the bottom of their context, are more than "women." Their lived realities are determined by the intersecting positions of privilege and subordination they may occupy, at all times and simultaneously, in various overlapping relations that are organized around the hierarchies of class, race, religion, and sexual orientation. Taking into account the impact of these statutory restrictions on women's class interests as Third World workers, for instance, reveals other and contemporaneous dimensions of subordination that are maintained by and organized around the gendered expectations that women should bear primary responsibility for child care and housework - expectations justified by the cultural and ecclesiastical as well as by the statutory regimes of that context.

This multidimensional approach is beckoned by the abundant evidence linking women's poverty and economic subordination to employment practices that maintain sex-segregated occupations through myriad means both in the United States and throughout the Third World. In other words, the formal restrictions established by the Guatemalan Code must be analyzed in light of the pervasive practice of employment discrimination directed at women as workers - practices like the discriminatory refusal to hire women for jobs traditionally occupied by men as well as the suppression of wage rates in jobs that are occupied primarily by women. n136 These employment practices, in tandem, construct the sex-segregated occupational structures which reinforce women's economic subordination even as women enter the workforce in increasing numbers.

The important point of this analysis for LatCrit theory's goal of relevance through anti-essentialist, anti-subordination praxis is that the employment practices by which sex-segregated occupational structures are constructed across various economic sectors or markets are linked directly to the sex-based division of labor within the family: indeed, there is ample evidence that "the origins of sex-segregated occupations are found in the unequal division of labor
Thus, rather than ensuring the protection of actual families or ensuring that children receive necessary care and attention, the discriminatory allocation of family responsibilities and restrictions on women's rights of free association reflected in (but hardly exhausted by) the provisions of the Guatemalan Family Code contribute directly to maintaining the sex-segregated occupational structures through which women are channeled into low-wage, dead-end jobs, as well as the practices through which wages and other job-related benefits are suppressed in jobs occupied primarily by women. As a result of these provisions and practices, women systematically are denied equal rights to obtain remunerative employment and to enjoy the increased autonomy and self-determination such employment affords. Moreover, to the extent women's participation in the workforce is occasioned by their husbands' inability to earn enough to support their families (or indeed, by the absence of a male wage earner in the family), discrimination against women workers, based on counterfactual assumptions that women's wages are a secondary source of discretionary income for families supported primarily by men, only restrict women's ability to lift their families out of poverty through wage labor. This broadening of anti-subordination critique within LatCrit theory thereby points to strategies of resistance that recognize the transnational interaction of these various institutions and industries.

Equally important, this broadened analysis would be incomplete without similar recognition of the position in which this statute, and its normative or religious underpinnings, situate women due to the normative inter-linkage of class, color and sexual orientation. For instance, a Queer critical sensibility within LatCrit theory thereby points to strategies of resistance that recognize the transnational critique within LatCrit theory thereby points to strategies of resistance that recognize the transnational interaction of these various institutions and industries.

Proceeding from the "double and nothing" insight, a particularized and transnational LatCrit analysis would interconnect how, as women, the Guatemalan Family Code similarly relegates lesbians to subordination within the family and throughout society and how, as lesbians, this Code projects and reinforces the exclusion and erasure of lesbian women within the family and throughout society. This broadened but particularized comparative analysis thus interconnects the particular socio-economic conditions of women and lesbians in Anglo and Latina/o contexts to produce similar and perhaps interconnected positions of subordination on the combined grounds of sex, gender and sexual orientation. This transnational analysis indicates that this "family" Code, like other social and legal scripts, generates direct as well as consequential effects that intersect in mutually-reinforcing ways to subordinate all women in different ways both within and beyond conventional family relations. This analysis thus heeds, and illustrates the anti-subordination efficacy of, Professor Luna's call for transformative universality through critical particularity.

This broadened analysis also illustrates why the strategies needed to combat internationally and cross-culturally all forms of subordination imposed through the deployment of gendered stereotypes must be informed and guided by the particular conditions prevailing in Latin America and other portions of the global village: LatCrit theory's search for effective reformatory interventions must deal with the fact that, in many of these countries, gendered stereotypes are still codified as domestic law; we must deal with the fact that, in many of these countries, domestic legal process is only barely relevant to the structuring of power and the accountability of the state; we must deal with the particular ways in which the subordinated status imposed on women through the legal structures of the family is reinforced by transnational economic processes, like export processing zones, flexibilization, and the international division and feminization of low-skilled labor.
with subordination to a concrete engagement with the particular and contextual in order to craft holistic analyses of subordination systems that respect no borders or boundaries; as part of this effort, we specifically must develop international strategies and communities geared to international fora.  n142

Returning in closing to our initial emphasis - the articulation of a critical anti-subordination analysis of religion's role in regulating sexuality and channeling it through a particular vision of the male-dominated family organized around the centrality of heterosexual marriage - what we have seen is the cumulative and interconnected structures and relations of subordination that have been licensed in part by the direct and indirect exertion of religious ideological and institutional power and influence. Though a critical assessment of religion's effects in this time and place requires LatCrit scholars neither to wholly accept nor wholly reject "religion" per se, it does require us to articulate with care how LatCrit theory might help to re/align "religion" with social justice for all - including all non-European peoples, all women, and all sexual minorities. Certainly, the normative validity of an order that systematically produces and willfully legitimizes so much subordination is at least questionable when approached from a social justice perspective. Questioning this validity in a penetrating and expansive way is a task pending for LatCrit theory, a task whose critical engagement we hope that these brief notes will help to hasten.

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III. Unity In Difference: Observations and Aspirations About LatCrit Theory's Diverse Social Justice Agendas

Like the preceding parts, the following discussion seeks to apply critical anti-subordination analysis to particular issues or themes that framed the LatCrit II conference, and that are represented in this symposium directly or indirectly. To do so, this Part divides into three sections. The first section focuses on issues arising from and related to the LatCrit commitment to pursue its anti-subordination agendas cognizant of and attentive to inter- and intra-group differences. The second section then examines the operation of poverty in Latina/o communities to encourage greater engagement of class within LatCrit theory. The third section closes the Afterword with some reflections linking the production of scholarship to the construction of a LatCrit community, and considering briefly how these inter-related objectives may best be accomplished in both the short and long term. In this way, we seek to develop LatCrit approaches to issues of knowledge, community and transformation that exemplify and implement an expansive anti-subordination consciousness and agenda within LatCrit theory.

A. Inter/Intra-Group Solidarity Through Justice in LatCrit Theory

Since the beginning of the LatCrit gatherings, talk of the "Black/White Paradigm" has become staple fare. We are heartened to see a rapid and constructive evolution of that discussion. As we read it, the evolution of the LatCrit critique of the Black/White Paradigm thus far has unfolded in five steps.

The first step was centering the Pdigm and noting its marginalization of Latinas/os and other non-White/non-Black people of color. n143 The second was recognizing this Pdigm as an appTus specifically of white supremacy and acknowledging the particularized oppression of Blacks under the Pdigm. n144 The third was considering the historical sources of the Pdigm, which is rooted in the exceptionalism of blackness in the social and legal history of this nation. n145 The fourth was to acknowledge and thematize the trans [*563] national dimensions of Latina/o identities as well as the multiplicity of subject positions around which a Latina/o political identity might be constructed and contested in articulating or manipulating the anti-subordination objectives of LatCrit theory. n147 The fifth was to confront the erasure of indigenous peoples both by the Pdigm, and by our preceding stages of critique. n148 We consider these five stages of theoretical development as truly remarkable progress in a short time period, and look forward to continuing the evolution of this critique.

As the proceedings of the LatCrit II conference clearly demonstrate, those early insights have continued to evolve in LatCrit discussions of race relations. One example is the difficult topic of racism within and between various groups of color, including Latinas/os. n149 This topic has been broached in one form or another at every LatCrit gathering, but the LatCrit community has not yet focused in a sustained way on the relevance for LatCrit theory's development of the complex issues and concerns underlying this topic. This topic, however, is crucial both to pan-group aspirations and to inter-group relations; the activation of racial identities within and among people-of-color groupings against the backdrop of white-black binarism can promote solidarity or division; it can facilitate or defeat the quest for social justice; it can illuminate or reify current understandings of "race" and racism. Because this topic awaits our collective scholarly attention, we include it here as a prime aspiration for LatCrit theory at this time. n150
We begin with Professor Kevin Johnson's incisive distillation of intra-Latina/o group conflict, which pivots on the interplay of race with ethnicity, language, class, social status and other factors. n151 This account shows that Latina/o subordination encompasses hierarchies blessed both by Anglo and Latina/o cultures, thereby reminding [*564] ing LatCrit scholars of the internal sources that yield intra-group tension and abet Latina/o subordination. But this account also reminds us that intra-group tensions and their detrimental effects have additional causes, which are imposed externally: intra-group tensions, for instance, are instigated by the "unequal distribution of legal rights among Latinas/os" - inequalities imposed by law on the basis of legislative and judicial choices regarding constructs like formal immigration or citizenship status. n152 This reminder has wider implications because it calls for recognition of a like dynamic - the external imposition of white supremacy on various groups of color at once - that leads to similar inter-group-of-color tensions and consequences.

These intra- and inter-group tensions, as Professor Sandrino's article effectively suggests, may be due in part to an uncritical conflation of race and ethnicity in the social and legal discourse of the United States. n153 Among Latinas/os, as among other racialized and ethnicized classifications, the categories produced by these social constructions sometimes overlap and sometimes not: Latinas/os, Professor Sandrino's article makes plain, are clusters of multiracial and multiethnic populations. n154 Therefore, both racism and nativism are relevant to LatCrit theory's anti-subordination agenda. But racism and nativism can be combatted effectively only if white supremacy is understood to be their specific and actual formulation in this time and place; in other words, they are instigated by the "unequal distribution of legal rights among Latinas/os" - inequalities imposed by law on the basis of legislative and judicial choices regarding constructs like formal immigration or citizenship status. n155 In this instance, the context was celebrity sports and its racialized dimensions in this white supremacist society. Using media and popular obsession with the racial (self-)identification of multiracial golf sensation Tiger Woods in 1997, Professor Chang interweaves culture, politics and power seamlessly, questioning: "Why have certain communities become so invested in his racial classification? What is to be gained?" n156 These are precisely the questions to which LatCrit theorists must subject all sources of inter-group conflict that enter or affect our work.

[*565] In other words, all LatCrit encounters with tension and conflict, which inevitably take place against the omnipresent backdrop of white supremacy and privilege, should proceed from a self-critical analysis of the benefits to be gained and the relations of solidarity and/or confrontation that may be catalyzed through our interventions - and of whether our intervention is, in fact, tailored to produce our intended objectives - given this omnipresent backdrop. To be effective, LatCrit interventions must be supported and directed by a keen analysis of their likely impact on the overall but particular context of their occurrence. Professor Chang's questions thus prompt us to etch a few notes about the links between this symposium and LatCrit theory generally, as well as among some of the essays presented within this symposium, which are in part responsive to these queries.

In particular we seek here to bring together the LatCrit deconstruction of the Black/White Paradigm with the recent attention directed by outgroup scholars to inter-group tensions among and across non-White identity categories. This connection is substantively and strategically important at this stage of our still-unfolding critiques because further LatCrit discussion of Black-White polarities can benefit from recent analyses of the color-on-color inter-group grievances and relations that inevitably are set against the omnipresent backdrop of White supremacy. n157 These recent analyses have shown how groups of color can lose sight of long-term anti-subordination interests when they opportunistically redeploy structures of subordination to exploit a momentary advantage created by some permutation of White supremacy's power: inter-group alliances among communities and scholars of color to make common cause against the hegemony of whiteness can be compromised in profound and lingering ways through a shortsighted reaction to the appearance of opportunity. The pending question for LatCrit theorists, therefore, is: "How do we, as African Americans, we as White Americans, we as Asian Americans, we as Latina/Latino Americans participate together in struggles that involve people who are not ourselves?" n158

Or, more precisely, how do LatCrit scholars help to reconceive social justice struggles that appear to be attenuated from those that we imagine to be our own, but that in fact implicate our own? Conversely, how do we craft and apply anti-subordination analyses that display the wholism n159 interconnectivity n160 and cosynthesis n161 both of [*566] interlocking forms of oppression and of efforts to resist them?
Equally important, but conceptually distinct, how do we develop an ethical vision beyond the imperatives of strategic alliances that can sustain our commitment to the liberation of others, particularly and precisely in those instances when their liberation challenges whatever privileges we may enjoy? n162

One path to and past the difficult issues raised by these queries, urged by Professor Martinez in his symposium essay, is the conscious and proactive embrace of "epistemic coalitions" that can help to cohere complex - and perhaps sometimes colliding - anti-subordination struggles. n163 The Martinez essay's call to epistemic coalitions, joined with Professor Luna's interweaving of particularity and universality, seems to us an especially useful lens through which to view the continuing effort specifically to transcend the prevalence of reductionist accounts of "race" relations that tend to focus social and legal discourse "exclusively or primarily" on white domination of black persons. n164 Taking our cue from the combined insights of the Martinez and Luna essays, LatCrit theorists must exercise heightened care to differentiate black from white in the Pdigmatic status quo. More so, LatCrit theorists must make the particular and foundational degradation of blackness via the Black/White Paradigm organic to our critiques of white supremacy's operation under that Pdigm, while simultaneously striving to open a critical discourse that also incorporates other non-White, non-Black group interests. This expanded anti-subordination approach to inter- and intra-group race relations within LatCrit theory and outsider jurisprudence is counseled by the need for epistemic coalitions forged through careful investigation of the particular to discern the universal.

A show of heightened care and differentiation is important to LatCrit theory's continuing rigor because it anticipates and responds to the possibility that it would be problematic: it opens to question the legitimacy of our corresponding and unfinished efforts to dismantle white supremacy and its legacies of social injustice against the backdrop of this entrenched Pdigm. This approach is requisite because LatCrit theorists must consider carefully, consciously and critically the impact of our work not only on Latinas/os and our relationship to white supremacy, but also the effects of our interventions on the ongoing antiracist struggles of African Americans and other groups of color. n165

LatCrit theorists accordingly should endeavor in our next phase of Pdigmatic deconstruction to express critical comparisons of African American, Native American, Asian American and Latina/o experience under the hegemony of whiteness to emphasize the interconnected yet differentiated anti-subordination insights and imperatives embedded in those group histories. This critical comPtive approach not only will avoid the elision of particularity, it affirmatively can yield a deeper and broader exposition of whiteness' variegated oppressiveness. This approach also can temper headlong rushes to the sort of non-white opportunism that impedes antiracist struggle for all groups of color because it distracts and deflects anti-subordination energy away from the perpetration of white supremacy and redirects that energy toward a temporary or superficial alleviation of one oppressed group at the expense of another. n166 ComPtive critiques thereby can produce a sturdier caliber of substantive anti-subordination insight, discourse and struggle: comPtive critiques can delineate universality through particularity, and nurture coalitional projects through a shared epistemology on both intra- and inter-group levels.

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B. Confronting Colon/ialism in LatCrit Theory and Practice

LatCrit evolution on multicultural or multiracial antiracist concerns is further reflected in the fact that LatCrit II is the first time in LatCrit gatherings that our community focused directly on the relationship between "Latinas/os" and native peoples. n167 But this relationship is made especially complex in light of Latina/o mestizaje, or racial and ethnic intermixture. Indeed, various LatCrit scholars have noted from time to time that the cultural and racial mixture of Spanish and indigenous peoples is a key source of contemporary Latina/o identities. n168 Yet colonial histories and legacies also make the Spanish connection complex, a point that underlies the challenge issued by the Guerra essay in this symposium. n169

As activist Guerra points out in her essay, the very contents and usages of "Latina/o" as a denominator of identity can be problematic: it opens to question whether LatCrit theory is cognizant of indigenous roots and committed to the ongoing demolition of neocolonialism. n170 When Guerra asks whether LatCrit theory is committed to tackling "Colon" in neocolonialism, she knowingly highlights the actual
name of the first conquistador, Cristobal Colon, in the word that describes the legacy he put into motion to prod us into thinking critically about our self-conception as Latinas/os or LatCrits. In fact, this essay challenges everyone to question whether anyone should embrace "Latina/o" as the category and label that designate our position in this country at this time. Guerra thus incites a provocative and underexplored question for LatCrit discourse: Should "LatCrit" denominate and describe our position, work and community in this particular place and time? This topic, as the Guerra essay begins to elucidate, is rich and ripe.

The Latina/o-identified scholars that in 1995 originated and adopted the "LatCrit" denomination did so in a self-aware and self-critical manner, and in a manner designed to convey the centrality of anti-subordination ideals to our action. n171 We were aware of other possible designations, including most notably the "Hispanic" labeling, but we eschewed that positionality in a critical and conscious manner. That original decision stemmed from both geographic and racial considerations, and it signals both geographic and racial messages.

The "Hispanic" category was and is a creature of this nation's federal government, n172 a category that furthermore encompasses persons hailing from both within and without this hemisphere. It describes persons from Europe - Spain - and even Asia - Filipinos - as well as persons from South America and North America, such as those who have created "Spanish" Harlem in this country. n173 The "Latina/o" label, on the other hand, connotes a more regionalized - a hemispheric - designation that, indirectly, also evokes the indigenous dimension of the groups propagated through Spanish and native mestizaje, or intermixture. In our estimation, Latina/o therefore was the more appropriate and accurate geographic and racial self-inscription. Additionally, in this country the "Hispanic" label signifies whiteness. For instance, "Hispanic" is used within and among Latina/o communities to communicate Spanish, and hence whitened European, ancestry: "Hispanic" expresses a claim of whiteness and a position of relative privilege within the racially mixed and diverse Latina/o communities of this country and world. n174 "Hispanic" is an identification that signals affinity for the most dominant and oppressive racial position in this country. On the other hand, the "Latina/o" label conveys an alignment with people of color in this country, as well as an embrace of the non-Spanish, or indigenous, elements that help to configure our present-day communities. Given these additional points of racial politics, the inter- and intra-group message of the "Hispanic" descriptor quickly yielded to "Latina/o" identification when the political choice arose in a room populated with critical anti-subordination scholars.

Nonetheless, the Guerra essay effectively calls upon the LatCrit community to revisit and even reconsider that initial choice. In this essay Guerra implies the real plausibility of - and perhaps she soon will make explicit - other self-identificatory options that in her view are better suited to our scholarly and political self-conception in this time and place. Because LatCrit conversation on this subject up to now can only be regarded as preliminary, and therefore in some ways uncritical or incomplete, we hope the issues raised by this essay say will be pursued as a timely and illuminating intervention in the continuing unfolding of a self-critical "LatCrit" community consistently devoted to its diversified anti-subordination pronouncements.

And in this self-critical spirit of anti-subordination unity through the positive embrace of difference and diversity, the LatCrit community also must attend to issues of language and its uses in our gatherings, publications and meetings. LatCrit theorists have time and again critiqued and rejected using the force of law to suppress the Spanish language in both professional and personal interactions. n175 LatCrit scholars have marshaled their training and skills to demonstrate how various legal regimes of English supremacy are inimical to the history and culture of this heterogeneous society. n176 LatCrit projects and gatherings accordingly have been dedicated to the exercise of pluralist language rights as an expression of Latina/o identity and LatCrit anti-subordination goals.

Increasingly, therefore, a hallmark of LatCrit theory is that LatCrit analyses sometimes are partially expressed in Spanish, both in verbal and in written settings. This phenomenon is reflected in various of this symposium's essays, albeit to different degrees and in different ways. Perhaps most notable in the symposium is the Casta<nt>eda essay, which exemplifies the power of bilingual texts in their demonstrative as well as declaratory dimensions. n177 The critical concern, however, is over the effects of this practice, and whether those effects are consonant with LatCrit anti-subordination goals in particular contexts. Despite the powerful use of bilingualism in this essay, this underlying concern always lurks because the dangers that excite it are perennial.

Thus, LatCrit use of bilingualism, like all other practices, is subject to critical interrogation to determine whether it operates in a productive, or in an unduly exclusionary, manner. This interrogation of
course must be informed by particularized factors or contexts; for instance, whether the use of bilingual capacity occurs at a conference, or in an article; if at a conference, whether translation is somehow also provided. Though we have not drawn definitive conclusions about these queries, our ideal is that LatCrit theory should [*571] employ bilingualism to resist the hegemony of English monolingualism, but we must devise ways of doing so that enable non-Spanish speakers to participate meaningfully in the project of resisting English hegemony. The LatCrit community's self-critical social justice egalitarianism, in other words, requires us to pursue at once both the reclamation of dignity for the Spanish language as well as the full and equal inclusion of English monolinguals in our anti-subordination projects and discourses.

This ideal in turn raises the related issue of indigenous language reclamation, a goal implicitly hinted by the points made in the Guerra essay n178 about the conjunction of Spanish and native elements in the construction of "Latina/o" people and in the Casta<tilde>eda essay n179 about language and its multifaceted role in the production of power. While Spanish is a subordinated language vis-a-vis English in this Anglocentric society, it also is the language of conquest and attempted extinction vis-a-vis the indigenous societies that previously prospered on this land. Given this background, is the reclamation of Spanish effectively a redeployment of colonial legacies and their structures of subordination? Is the reclamation of Spanish an uncritical or undertheorized re/assertion of eurocentric and white, though not specifically Anglo, supremacy in public discourse? More specifically, is the reclamation of Spanish without a concomitant effort to reclaim indigenous names and idioms coherent in light of the logic underpinning the choice of "Latina/o" over "Hispanic" in the original self-ascription of "LatCrit" theorists? n180 The resolution of the points suggested by these complex questions cannot possibly be endeavored in the context of this Afterword, but a few preliminary observations may be useful to prospective LatCrit theorizing on this aspect of language rights as part of the LatCrit anti-subordination agenda.

We turn, again, to the particularities of context, and to the guidance of overarching anti-subordination principles, to approach this topic. n181 In this place and time - the Anglocentric construction of the United States at the millenium - the reclamation of Spanish is indeed anti-subordination practice: it dislodges the hegemony of a single culture and its tongue in the discourse and governance of a multicultural society professedly dedicated to heterogeneity and equality. But given the history that underlies our present context and its configuration of power positions, that practice is woefully incomplete without an equally vigorous reclamation of the indigenous [*572] languages that Spanish coercively supplanted in an earlier time and through vast portions of the land that this country now occupies. n182

Of course, we do not mean by "reclamation" that LatCrit scholars should embark at once on a concerted effort to express our analyses in native tongues. In our view, the first phase of reclamation instead signifies a clear and conscious recognition that exploration specifically and contextually of native language suppression or extinction is part of LatCrit theory's collective critical panorama. Reclamation thus means undertaking an initiative not yet engaged in LatCrit theory: developing a critical account of the relevance for legal reform strategies and social transformation projects of the historic legacies and contemporary subordination created through the repression of native tongues by the forced imposition of Spanish, and also incorporating this knowledge into the broader account of "Latina/o" identities, lives and aspirations that LatCrit scholars are composing incrementally through our joint work. It also means attending to, engaging and contributing our critical energies and political solidarity to the ongoing efforts through which indigenous peoples are seeking to construct a transnational Indian rights network focused specifically on the preservation of native languages and cultural practices both in the United States and throughout Latin America. n183

This additional, specific, reclamatory effort may be more taxing than the former, but that relative difficulty makes the very point that underscores the importance of reclaiming our native idiomatic heritage and, perhaps, capacity: it is precisely because Spanish is the privileged language within Latina/o cultures that anti-subordination imperatives require LatCrit theory to mount a determined effort toward developing a critical consciousness about indigenous tongues. [*573] An either/or approach to language reclamation and rights would decontextualize our anti-subordination struggle for language liberty, an approach inconsistent with LatCrit Theory's professed anchoring in an egalitarian and expansive social justice sensibility.

The LatCrit approach to language anti-subordination analysis therefore cannot be limited, or self-limiting, by a privileged centering of Spanish to the exclusion of analogous outgroup grievances regarding subordination through language regulation. The purpose of LatCrit language analysis must be to deconstruct and resist how English suppresses all other languages in this country's numerous and multicultural communities, and how this suppression erases identities and disorganizes communities. Only
expansive and egalitarian critique is likely to bring into existence an environment that affirmatively encourages all persons and groups presently suppressed through language regulation to flourish with dignity.

Finally, anti-subordination language analysis in LatCrit theory must reject the gendered inequality that is integral to the structure and elements of Spanish. This rejection is evidenced by our use, in this Afterword, of "Latina/o" rather than simply "Latino" or even "Latino/a" wherever that term appears. This usage denotes the practice of anti-subordination principles within LatCrit discourse because it looks to, and attempts to center, the relative "bottom" of the relevant categories - in this instance of syntax, gender. This practice, though already more generally in use within LatCrit discourse, has not been consistently adopted. n184 We think this inconsistency represents a lapse among ourselves in self-aware and self-critical anti-subordination scholarship because at a minimum this lapse acquiesces to androsexism in Spanish and in its use within LatCrit theory. It is a lapse that in effect continues gender subordination, even if unwittingly.

But the LatCrit community easily can mitigate these effects: what it takes, as often is the case, is an individual and collective decision to practice our anti-subordination commitments with evermore vigilance and detail. Though this single change in our language habits will not of itself eradicate gender inequality within or beyond Latina/o communities, this change does represent an increment of progress toward the development of critical anti-subordination consciousness and community. More importantly, this relatively modest change signifies LatCrit fidelity to substantive principles and methods, and it constitutes an example of practicing theory because it represents anti-subordination praxis. We therefore conclude this brief overview of anti-subordination language issues that are pending for LatCrit theorists with a call to consistent adoption of "Latina/o" [*574] within our discourse as part of our larger and ongoing effort to coalesce and advance social justice claims both between and beyond LatCrit scholars.

This brief discussion of race, ethnicity, colonialism, "Latina/o" self-identification and language reclamation in LatCrit theory of course does not exhaust the issues raised by LatCrit II. However, we hope that these notes present useful ideas in the development of LatCrit theory and community. In this instance, as in all others, our aim is to help ensure the relevance of LatCrit work and vision in the progressive pursuit of social justice along multiple legal fronts of oppression through anti-subordination collaboration.

C. Law, Poverty and Culture in the Construction of and Resistance to Latina/o Subordination

The economic tour of San Antonio, an unprecedented innovation within LatCrit programs, opened a variety of political and theoretical possibilities for future LatCrit conferences. n185 For one thing, the tour brought into concrete relief the very different life situations and conditions of poor Latinas/os in the Southwest compared, for example, to the urban slums of the Northeast. In our view, engaging these differences is and must remain a central focus of LatCrit theory. In this section, we therefore focus on class issues to advance the substantial contributions LatCrit scholarship already has made in deepening critical analysis of the multiple diversities within and between the various Latina/o communities throughout and beyond the territorial boundaries of the United States.

More specifically, we focus here on the advances to be made through the exposition of four major themes: first, we stress the need to further compare and contrast the specific legal events and regimes that have been particularly operative in the construction of poverty within and between different Latina/o communities; second, we urge LatCrit scholars to draw specifically on the wealth of interdisciplinary analysis examining the particularities of uneven development and economic restructuring in different geographical areas because this knowledge sheds significant light on the broader economic and political processes through which Latina/o poverty is differentially structured and, hence, on the need to tailor legal reform interventions and political strategies to the particularities of these processes in diverse localities; third, we emphasize the continuing need for LatCrit scholars to further explore the intersection of law and culture, focusing particularly on the way cultural norms and expectations operate in the social organization and subjective experience of poverty within Latina/o communities; and finally, we return once more to examine the subordination of women in the heteropatriarchal family, this time focusing on the way male supremacy contributes to the reproduction of Latina/o poverty by undermining the collective organization and political mobilization of women workers in Latina/o communities.

Professor Luna’s essay within this symposium provides a particularly apt point of departure for this critical analysis. n186 This essay links the deployment of derogatory anti-Mexican stereotypes - currently used in public discourse to legitimate the poverty, marginalization and violence produced by anti-immigrant, anti-affirmative action, anti-welfare and English-only policies - to a historical analysis of the legal events following the conquest of Mexico in what is now the southwestern United States. Through
critical analysis of the way race and national identity were represented in land-takings cases after the conquest, Professor Luna shows how the racialization and "othering" of Mexican people in legal discourse was used repeatedly to rationalize and legitimate the dispossession of their lands - in violation both of established constitutional doctrines and of the treaty obligations the United States government had undertaken to confer U.S. citizenship upon, and to respect the property rights of, Mexican people in the newly-acquired territories. Instead, the racialization of Mexicans, in and beyond judicial discourse, created a new class of "true" citizens - the white, Anglo settlers on whose behalf the territories had been conquered - while the citizenship conferred upon Mexican Americans proved to be a second-class concoction of judicial manipulation.

By linking the current structure of Chicana/o land tenure, or rather the lack thereof, to this historical account of the legal doctrines and interpretative manipulations through which Mexican Americans were deprived of their lands and denied the rights of equal citizenship status in Anglo-American jurisprudence, Professor Luna’s essay effectively foregrounds important particularities and universalities in the legal construction of Chicana/o poverty. At the same time, her methodological approach, combining history and law, opens up new points of contrast and comparison for LatCrit theory. These gains accrue because Latina/o/poverty has been constructed, across space and time, by many different legal events and is maintained in different places by different legal regimes, whose common elements and particular divergences provide important, and as yet unexplored, sites for LatCrit scholars as we seek to develop more comprehensive understandings of the ways in which Latina/o poverty is constructed and maintained through law. In this manner, LatCrit scholarship positions itself to make important contributions in two distinct but inter-related ways: first, by comparing and contrasting the different historical and contemporary legal events and regimes that have enabled upward mobility for some segments of the Latina/o population and produced poverty in others; and second, by identifying the different avenues of legal recourse and political resistance currently available in different contexts to different Latina/o groups. In this manner, LatCrit theory learns not only the particulars of structural subordination but also uncovers the particulars of effective and efficient resistance strategies.

Certainly, one particularly important legal event in the differential construction of poverty among Latina/o communities has been the different immigration status accorded to different Latina/o immigrant groups over the course of this nation's history: the welcoming reception that Cuban immigrants received in the early 1960s, and which included unprecedented government benefits programs and special speedy naturalization procedures, is in marked contrast to the hostile reception suffered by Salvadoran and Guatemalan refugees in the 1980s or Mexican immigrants in the 1990s. While the early Cuban immigrants enjoyed massive public assistance, enabling them to create a successful entrepreneurial enclave in Miami, the Salvadoran, Guatemalan and Mexican immigrants have enjoyed only the disabilities of their illegal immigration status: low-wage jobs, vulnerability to labor exploitation, non-payment of wages and on-the-job harassment. Approaching the differential incidence of poverty in different Latina/o communities through a LatCrit analysis of the practical and material impact of U.S. immigration laws and related policies could enable LatCrit theorists to provide a powerful framework for developing much-needed counter-narratives in the rhetorical battle over the representation of Latina/o poverty, as well as ammunition supporting progressive policy initiatives in the areas of government assistance and immigration.

Similarly, the objective of identifying new avenues of legal recourse and creating new strategies for political and economic mobilization to combat Latina/o poverty calls on LatCrit theory to advance its critical analysis of Latina/o poverty by noting the existence and exploring the implications of the new economic and political analyses that are emerging in other disciplines. We especially urge a LatCrit encounter with the political economy and geographies of uneven development as well as the socio-geographies of economic restructuring. These fields of social inquiry focus specifically on analyzing and explaining the way different economic and political processes have structured, and are now restructuring, socio-economic life in different parts of the country and the world. A sustained and critical engagement with this interdisciplinary literature promises significant contributions to our anti-subordination legal scholarship and activism because the kinds of anti-poverty legal strategies most likely to be effective in any particular place or time will depend, at least in part, on the broader economic and political contexts that generate the macro- and micro-processes through which poverty is being re/constructed in any particular place and time. The need for different strategies, policies and legal reform proposals follows directly from the fact that the forms of poverty experienced by different Latina/o communities in these different geographical areas are produced through different economic processes, respond to different political logics and are coalesced by different socio-legal
regimes. Thus, LatCrit scholars will need to develop very different legal strategies for combating Puerto Rican poverty in New York, New Jersey and on the island of Puerto Rico as compared, for example, to the strategies needed to combat Chicana/o poverty in the border towns of Southern Texas, or the poverty of Central Americans and more recently-arrived Cubans in Miami.

To be more specific, combating Puerto Rican poverty requires strategies that can effectively intervene in and against the processes of economic disinvestment and industrial relocation that have closed so many industries in the Northeastern "Rustbelt" as well as addressing the particularities of underdevelopment that result from the history and current political logic of Puerto Rico’s commonwealth status. n189 These strategies may call for, and therefore channel, LatCrit legal analysis into areas like plant-closing notification and employee-ownership laws, or the legal framework of collective bargaining, or legal restrictions on corporate relocations, or legal strategies to address particular structures and processes in Puerto Rico itself. However, reform proposals and strategies developed in response to these particular situations may be completely ineffective or irrelevant to combating Chicana/o poverty in cities along the U.S.-Mexico border precisely because poverty and unemployment in the border towns are linked to different economic processes - and particularly to the misfortunes of the Mexican economy. n190 Combating poverty in the border regions may, consequently, call for different legal strategies - strategies, for example, that address the current distribution of land ownership, that promote enforcement of labor and environmental standards in the Maquiladora industry across the Mexican border, and that combat the militarization of the United States border patrol.

It follows from the foregoing that strategies appropriate for combating poverty in the border regions or the Northeast Rustbelt may be completely ineffective in combating the poverty of Central American and Caribbean immigrants in South Florida, nor will they necessarily address the poverty that Latinas/os and indigenous peoples are experiencing in Latin America as a result of involuntary resettlements and internal displacements incidental to development projects or natural resource exploration and exploitation practices of first-world multinationals. Nevertheless, an anti-essentialist anti-poverty social justice agenda must take these particularities into account and attempt to address and resolve them. In doing so, we urge LatCrit scholars to explore the resources available in other academic disciplines precisely because combating Latina/o poverty in its particular manifestations will require LatCrit theorists to understand the different but inter-related economic processes and political logics at work in different geographical areas as part of our efforts to devise, develop and deploy the most effective theoretical, legal and political interventions.

A third major component of a LatCrit anti-essentialist anti-poverty engagement with particularity calls on LatCrits to further our collective understandings of the role of culture in organizing the social dimensions, as well as mediating the subjective experience, of poverty. LatCrit scholars need to explore, and incorporate into our scholarship, more concrete understandings of the way Latina/o cultural norms, values and resources influence the ways that different Latina/o groups experience, understand and respond to the conditions of poverty that affect them. This work is crucial to the ultimate success of any anti-poverty social transformation strategy because both policymakers and other legal decisionmakers are routinely - and perhaps unconsciously - influenced by the way Latina/o culture is externally represented in dominant mainstream public discourse. n191 Consider, for example, how the deployment of cultural stereotypes about Latinas/os in the underclass debates helped to organize interventions around the presumptions of pathology within Latina/o communities as opposed to interventions that might restructure the lack of economic opportunity in the Barrios: Latinas/os, like African Americans, have been subject to blame-the-victim rhetoric which attempts to attribute poverty and violence within subordinated communities to prescriptively nonwhite cultural norms/values. n192

At the same time, Latinas/os' uncritical internalization of inherited cultural norms and values may also present real obstacles to political and transformative mobilization. In this vein consider, for instance, how the cultural practices and expectations of ethnic solidarity tend to disguise and legitimate class exploitation within immigrant communities. Focusing specifically on Cuban women working for Cuban American employers in Miami, sociologists Alan Stepick and Guillermo Grenier note that, while the working conditions imposed on Cuban immigrants may routinely violate applicable labor laws and often are equivalent in all respects to the conditions endured by the most exploited illegal immigrants in any other part of the country, Cubans working for Cubans nevertheless do not perceive themselves to be exploited. Their lived experience is mediated by an ideology of ethnic solidarity, and by the "hopes for self-employment within a context of paternalistic employee-employer relationships," that create a Pdoxical situation in the Cuban enclave economy:
"The enclave allows increased exploitation at the same time that it ameliorates exploitation by providing cultural advantages and the [often, but not always, illusory] hope of self-improvement." n193 This intra-group dynamic recalls the duality and [*580] fluidity of self and social identification that Professor Johnson addresses in his contribution to this symposium; n194 Latina/o subordination is rooted both in Latina/o and in Anglo normativities, and in their interaction - Latina/o disempowerment hinges on internal and external frameworks similarly but differently biased by identity markers like citizenship, language, class, race, gender and other axes of social status. This intra-Latina/o dynamic is real, and LatCrit theorists must engage it as such; but internalized reality also must be distinguished critically from the external inscription of group stereotypes that motivate, and distort, policymaking on issues especially germane to Latina/o economic well-being.

The objective of designing appropriate and effective anti-poverty strategies and interventions thus raises all sorts of important and cross-disciplinary research issues about the role of culture in aggravating or mitigating the effects of economic marginality. n195 Recalling the economic tour of San Antonio, we therefore wonder how LatCrit scholars embarking on competitive, critical and particular analyses would assess the impact of assimilation on the cultural resources through which different Latina/o communities have sought to cope with and/or escape the experience of impoverishment and marginalization, and how different levels or forms of cultural and economic assimilation create tensions, obstacles or opportunities within and between poor Latina/o communities. n196 This overview, though necessarily abridged, should leave no doubt of the many cultural issues awaiting LatCrit attention and analysis in incorporating an anti-poverty agenda into our anti-subordination, anti-essentialist project.

Finally, no anti-essentialist anti-poverty social justice agenda would be complete without attending to, addressing, and ultimately intervening to reform the operation of male supremacy in heteropatriarchal Latina/o cultures and communities. Here we return to examine the particular situation of Guatemalan women workers, focusing specifically on those provisions of the Guatemalan Family Code that enable husbands to veto their wives' decision to participate in labor union activities, among others. n197 Just as cultural norms and internalized expectations may function to disguise and legitimate class exploitation, these external and internal influences [*581] may render invisible the interconnections between the gender subordination of women in heteropatriarchy and the escalation of class exploitation through the poverty it produces. From this perspective, it is easier to see the extent to which the external imposition, legitimation and coercive enforcement of a male monopoly over the labor of women effected through these provisions of the Guatemalan Family Code, in turn, intersects with other practices and dynamics that currently are undermining working class unionization throughout the world.

The detrimental impact of heteropatriarchal cultural practices and expectations on the development of a strong and vigorous labor movement in Latina/o communities within and beyond the United States has been well documented. Indeed, in examining the organizing failures and successes among Chicanas/os in the cannery industry, Patricia Zavella, has noted that:

One of the major problems in the Sun Valley Cannery Workers Committee was the lack of participation by women. Of the original membership, only a few were women, and most of them left because of pressure from their husbands... [This is because] women have domestic obligations and men do not. n198

From this perspective, the provisions of the Guatemalan Family Code convert the obstacles already occasioned by heteropatriarchal stereotypes and male resistance to new gender roles into a legal right for husbands to prevent their wives from engaging in union activity - to the detriment not only to their wives, who are denied the autonomy of self-determination and full and free participation in civil society, but also to the labor movement as a whole.

These ripple effects arise, and are profoundly significant in political and economic terms, because the future viability of the labor movement in the Americas is intricately linked to its future success or failure in organizing women workers: currently and increasingly, women are being employed instead of men precisely because their lack of workplace organization and their responsibilities in the home make them more vulnerable to labor exploitation. n199 As the number [*582] of women in the work force continues to increase, gendered stereotypes and traditional roles that prevent women from fully participating in workers associations will deprive the labor movement of access to the energies, commitment and engagement of the largest growing sector of workers. What emerges from this brief analysis is but one example of the myriad ways in which the cultural values and practices of heteropatriarchy in Latina/o communities are directly implicated in the dis/organization of class solidarity and collective action against economic exploitation and, in this way, the ripple effects of heteropatriarchy, as expressed
through the Guatemalan Family Code and similar legal regimes, are partially responsible for at least as much poverty as might be avoided by the efforts of a vigorous and organized working class.

In sum, then, we are pleased and proud to see that LatCrit theory is beginning the project of developing a richer and more complete cumulative account of class and the different legal events through which Latina/o poverty has been constructed, as well as the role of culture and identity in Latinas/os' chosen methods and modalities of resistance and transcendence. To the extent that time and other limitations permit, exposure to local Latina/o communities during the LatCrit conferences, their places and spaces as well as their local issues and personalities, presents a powerful potential worth pursuing. If this exposure is made more and more ample and interactive, for example, through the inclusion of local activists and issues in LatCrit conference proceedings, it may help to ground our theoretical enterprise in the political struggles of Latina/o communities outside the academy. In our view, these efforts at scholarship as well as a multiply inclusive community and local issues and personalities, presents a powerful potential worth pursuing. If this exposure is made more ample and interactive, for example, through the inclusion of local activists and issues in LatCrit conference proceedings, it may help to ground our theoretical enterprise in the political struggles of Latina/o communities outside the academy. n200 As well as provide LatCrit conferences with a common point of reference for exploring our many diversities over the course of different LatCrit gatherings held in different geographical areas from year to year.

D. Some Concluding Reflections on LatCrit Scholarship, Community and Transformation

From the outset of this discourse, LatCrit theorists have displayed an interest in building through our work both a body of trans formative scholarship as well as a multiply inclusive community of critical scholars. LatCrit experience to date thus suggests that both our scholarship and our community should be tailored to the advancement of social justice for multiply diverse outgroups, including but not limited to Latinas/os. Most notably, we have embarked on a series of annual gatherings and related publications to advance these dual and synergistic aims. In our view, these efforts at scholarship and community are co-equal means toward our expansive social justice objectives. Neither need yield to the other; on the contrary, we view scholarship and community in LatCrit theory as mutually-reinforcing anti-subordination methods. We therefore close this Afterword with a few thoughts on LatCrit II and its position or location within this embryonic and evolving record.

As Professor Espinoza's essay usefully reminds us, "Latina/o identity binds and breaks us." It does both because this category of identity, like others, simultaneously "gives us power and it subverts us." This dis/empowering duality, which encompasses both external and internal dimensions, frames the production of LatCrit scholarship: LatCrit theory inevitably is produced in the midst of, and through, the identity currents that cross through the LatCrit community as well as throughout this society at large. To rise above crude or self-defeating identity politics, the LatCrit community, like many others, therefore must recognize and come to terms with the complex effects that multilayered identity issues visit on the production, as well as the contents, of our work.

This point motivates the analysis elaborated in the essay by Professor Lopez, which demonstrates and affirms LatCrit theory as critical and self-critical scholarship committed to exploring intra-Latina/o and inter-people of color group issues from an anti-subordination perspective. In addressing the concept of "Learning About Latinos," this essay's careful review of the findings and methods of the Latino National Political Survey critiques both the benefits and limits of that project in light of the complexities presented by Latinas/os' socio-economic and political profiles. By reviewing the project in a detailed yet contextual way, the essay maps salient Latina/o interests and issues, including those of nationality, race, assimilation and language regulation. This essay, moreover, evinces anti-subordination purpose because the critique targets for scrutiny the sources and artifacts of dis/empowerment embedded in the project or its data. This essay thus sets an example calling for LatCrit repetition as LatCrit theory locates itself within the larger landscape of outsider jurisprudence and critical legal theory and praxis.

As our preceding discussion of narrative, criticality and social justice in the religion context strongly urges, LatCrit theory must situate itself in a critical and self-critical fashion within the broader discursive background that already has been created, through substantial efforts and at great cost, by outsider scholarship. We must, in other words, envision the gains as well as the limits of the recent past as our joint point of LatCrit departure. This positioning, however, requires a broad learning and a caring embrace of outsider jurisprudence and, in particular, of the lessons and limits to be drawn from its experience, its substance and its methods.

These lessons begin with multiplicity, intersectionality and multidimensionality, which avert essentialist oversight and poise us to manage both intra- and inter-group diversities. These lessons continue with the importance of balancing specificity and diversity to create self-critical communities and egalitarian coalitions devoted relentlessly to the vindication of "different" but pending social justice claims. These lessons include the imperatives of praxis and politics in all aspects of our professional lives, and particularly in
the crafting of critical legal scholarship as an engine for material social transformation that actually benefits traditionally marginalized groups. These lessons thus begin and end with our personal and persistent commitment to practice LatCrit theory and its anti-subordination ideals in every endeavor and encounter. For us, the LatCrit II conference and this symposium are a reminder that LatCrit theory can realize its full potential only if our nascent community grounds itself in these lessons even as it seeks to transcend the limits of prior experiences and insights.

LatCrit appreciation for the gains and lessons of the recent past certainly is manifest in LatCrit II's formal program: in keeping with past LatCrit custom, this conference once again featured a program designed to ensure vigorous and diversified exchanges across multiple categories of critical legal discourse. LatCrit II welcomed both newcomers and veterans, community activists and policy makers, and academics from within the legal academy as well as from other disciplines. In addition, LatCrit II's formal program continued the LatCrit custom of including the participation of multiply diverse speakers to analyze the Latina/o condition from varied identity positions, and in comparison or relation to other outgroups. Moreover, this program once again evinced LatCrit theory's commitment to transnational and competitive analyses of law and culture. In this way, the LatCrit II program aimed to celebrate and solidify the LatCrit ideal both of advancing critical knowledge and building intellectual community within and beyond "Latina/o" groups - an ideal born of the outsider jurisprudence and its insights.

Yet, as the experience of outsider jurisprudence also counsels, the transgressive aspects of our work require especially vigilant wariness of the external, institutional circumstances that surround and structure the emergence of LatCrit scholarship and community. n206 It should go without saying that LatCrit scholars must guard against the many dynamics, incentives and temptations that might lead us to produce scholarship that is unable to withstand the critical scrutiny of mainstream academics, much less ourselves: to the extent that LatCrit theorists are seriously committed to social transformation and sincerely believe that the theoretical work we do in our scholarship is relevant to that transformation, we must be committed to producing scholarship that will move Latina/o concerns and interests to the center of legal discourse and culture. Only by subjecting our claims and our work to critical and self-critical scrutiny will we succeed in enabling ourselves and each other to achieve the new insights and develop the new strategies and solidarities so necessary to the continued evolution of our collective anti-subordination objectives. This imperative or objective necessitates scholarship that continually breaks new ground, is conceptually rigorous, well-researched and critically reasoned.

It does not, however, mean capitulation to dominant forms or standards of knowledge. LatCrit theory from inception has manifested a keen appreciation of legal scholarship's inevitably political and politicized implications. n207 From the beginning LatCrit theory has demonstrated the capacity to employ, critique and expand the analytical techniques, interpretative methodologies and interdisciplinary resources developed by Critical Race Theory and other outsider scholars. n208 To amplify these gains, LatCrit theory need not "go back" and must instead forge ahead with the transgressive means and aims that outsider jurisprudence and prior LatCrit efforts have pioneered: we must collectively and individually dedicate ourselves to imagining and implementing new ways of going forward in light of the myriad lessons to be drawn from past experience.

[*585] To help ensure the long-term viability of LatCrit theory we proffer one means: we must push ourselves and our colleagues to articulate expressly and continually the linkage of identities to ideas and, more specifically, the linkage of insights derived from identities to ideas for doctrinal and institutional reforms with transformative potential. To secure our work's momentum, we consistently must explicate and emphasize in volatile and varied socio-legal settings the linkage of outsider identity critiques with critical analyses of substantive doctrines and policies that affect the social justice agendas of Latinas/os and other outgroups globally and in the United States. This intensified and explicit linkage of identities to ideas is precisely the insight that underlies Professor Carrasco's essay, n209 and we could not agree more.

Reminding us that LatCrit scholars embody multiple roles at once - including employees, activists, teachers, scholars and lawyers - Professor Carrasco's essay insists that we connect insights derived from our performance of these roles to substantive legal doctrines and their progressive reformation. n210 In effect, Professor Carrasco's essay demands that LatCrit theorists employ multidimensional identities as springboards to anti-subordination theory and praxis. This method is sound and urgent, as it trains our attention to a perpetual source of critical insight: the everyday micro-aggressions that permeate our social and institutional environments daily as we perform our multifaceted roles. n211 Connecting these micro-aggressions to their macro-structures - or connecting ideas derived from experiences shaped by identity - is a powerful source of anti-subordination insight.
Through this method of express linkage and its widespread use we thus hope that all LatCrit projects increasingly will demonstrate the relevance and importance of perspective jurisprudence to the project of legal reform and social justice in the United States and beyond.

Of course, this push to link multiplicitous and intersectional identities to liberational insights and reforms is never-ending, and inexorably so. The frontiers of LatCrit theory must be ever-expanding until the outer consequences of our work meet and overtake progressively the edges and centers of social and legal subordination. LatCrit theory must grow in scope and depth until its contours match - and actually overhaul - the conditions of marginality and disempowerment that pervade Latina/o and other outgroup lives. The profundity and intricacy of LatCrit theory must be guided by the complexity and diversity of Latina/o and other outgroup experiences with social injustice.

To this end, we think it important to refocus our collective attention on the need for all LatCrit scholars to keep in mind that we have launched a momentous and long-term project: building a body of scholarship that is socially relevant, that is the basis of a functional multicultural social justice community, and that lives up to the ideals of egalitarianism and anti-subordination. Our enterprise is difficult, draining and continual work, in part because it necessarily entails conflict as well as conflict resolution. If LatCrit theory is to succeed over the long term, we must be willing to express, critique and accommodate difference across multiple axes of experience and position in ways that always are consonant with our anti-subordination proclamations and aspirations. Part of our conscious, collective enterprise therefore must be to conceive and construct a discursive culture where conflict and conflict resolution are integral to the production of enduring and transformative legal scholarship. In sum, the LatCrit community must collectively and individually reach out to understand, embrace and defend the marginalized wherever they be found in this society and beyond it - even, or especially, when we perceive "them" to be "different" from "us."

Simply put, we cannot fear difference, its articulation, or its exploration. Instead we must welcome the manifestation of difference within and among LatCrit scholars, but with a sense of anti-subordination purpose: through the internal application of anti-subordination insights and methods, LatCrit scholars can focus on the construction of knowledge, communities and coalitions out of unavoidable differences. And when we misapprehend or alienate each other in the self-critical process of discovering various differences amongst us - as humans inevitably do from time to time - we must be able to help each other to learn from the experience and to continue our mutual work on behalf of Latina/o and outgroup anti-subordination objectives.

Thus, in closing this Afterword, our deepest hope and basic aim is that the richly diversified LatCrit community with which we proudly identify will approach each encounter with difference and conflict as an opportunity to reaffirm our individual and collective dedication to anti-subordination analysis and praxis. Indeed, as we have striven to do in this Afterword, we think it most important to seek out and apply anti-subordination methods for self-critical guidance on the very resolution of conflict among us. We can never forget that anti-subordination critique is more than rhetoric; it also is more than a method of understanding and reforming external social injustice. To secure the integrity and power of our work, purposeful anti-subordination consciousness and critical multidimensional analysis are mandates that remain always applicable internally as well.

Conclusion

With this Afterword we seek to contribute to the ongoing construction of a LatCrit discourse and movement by articulating an anti-subordination critique of LatCrit theory as outsider legal scholarship. This critique self-consciously aims to advance multifaceted social justice agendas formed and informed by the multiple diversities of Latinas/os here and abroad. By emphasizing critical anti-subordination theorizing as an overarching method, value and goal of the LatCrit community, we seek through this Afterword both to engage and situate the multivocality of the symposium contributors on various issues, perhaps most notably at the intersection of religion and sexuality. In so doing, our hope is to demonstrate that anti-subordination analysis can provide a flexible yet workable means of confronting, ameliorating, and resolving resolving, the inevitable conflicts of priorities and subjectivities that any collective enterprise, including our own, is bound to encounter over time.

FOOTNOTE-1:

n1. Even though this event was the "Second" Annual LatCrit Conference, it was the fourth LatCrit gathering; previously, two colloquia were held in conjunction with the annual meeting of the Hispanic National Bar Association. The first colloquium, in 1995, took place in


n2. The prior year, at LatCrit I, the eruption concerned gender, leading to a spontaneous Latina caucus during the conference. That event occasioned the first-ever gathering of Latinas qua Latinas in the legal academy of the United States. For reflections on that experience from one Latina participant, see Elvia R. Arriola, Foreword: March!, 19 Chicano-Latino L. Rev. 1 (1998).

n3. In this essay we often invoke "LatCrit theory" and its "ideals" or "values" or "purposes" in order to convey our joint, subjective sense of the LatCrit enterprise. However, we also acknowledge now, and throughout this Afterword, that "LatCrit theory" and its characteristics are young and evolving. Moreover, we recognize that this evolution will be shaped incrementally by the diversities of the self-selected group of scholars that choose to self-identify with, and to participate actively in, this movement. We thus refer to the LatCrit theory, community and consciousness in this essay with these thoughts, and caveats, always in mind.


n5. See sources cited supra note 1 (LatCrit colloquia and symposia).

n6. The term "Latinas/os" includes an amalgam of multiply diverse persons and groups. The term therefore necessarily oversimplifies. While cognizant of its limitations, we use the term here generally to signify persons with nationalities or ancestries derived from countries with Hispanic cultures and who self-identify as such.


n9. By "heteropatriarchy" we mean the symbols and structures that exalt male-dominated, cross-sex social arrangements and that therefore are androsexist and heterosexist in ideology.

n10. This economic tour was designed to show how the city of San Antonio has been materially constructed around racial, ethnic
and class lines through zoning choices and economic pressures that reflected corresponding relations of power and privilege. The tour, though only a brief incursion into the daily life of the host community, permitted the conference attendees to see for themselves the local manifestation of some issues directly relevant to LatCrit theory. See infra notes 185-200 and accompanying text.


n18. For personal testimonials, see Valencia, supra note 12, at 451; Hartigan, supra note 13, at 480; see also Castro, supra note 16, at 494 (elaborating a more sociological analysis of religion and Catholicism in Cuba).


n22. See Ota, supra note 14, at 440.

n23. Postmodern anti-subordination analysis of law generally calls for attention to the operation of power relations with special attention given to the context, history and particularities of the issues under analysis. Postmodern legal analysis thus eschews "essentialism" as well as any delusion of objectivity or neutrality. For outsider exposition of postmodernism in critical legal theory, see Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 Cal. L. Rev. 741 (1994); see also Anthony E. Cook, Reflections on Postmodernism, 26 New Eng. L. Rev. 751 (1992).

In outsider legal discourse, postmodernism has been advanced perhaps most by women of color involved with Critical Race Theory and Critical Race Feminism. See, e.g., Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139 (developing the concept of "intersectionality" in critical legal analysis); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1990) (demonstrating the importance of "multiplicity" in critical legal theory); Berta Esperanza Hernandez-Truyol, Building Bridges: Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement, 25 Colum. Hum. Rts. L. Rev. 369 (1994) (advancing the concept of "multidimensionality" in contemporary discourse about Latinas/os). Since these early gains, scholars of color...
have continued elucidating additional concepts or tools to enhance postmodern anti-subordination critiques of unjust legal doctrines, institutions and processes. See, e.g., infra notes 159-161 and sources cited therein on wholism, cosynthesis and interconnectivity.

The methodological and substantive breakthroughs of outsider legal scholarship represented by these works have been organic to the conception and early articulation of LatCrit theory. See, e.g., Francisco Valdes, Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment, 2 Harv. Latino L. Rev. 1, 56-59 (1997) (introducing the symposium based on the First Annual LatCrit Conference and discussing LatCrit theory's grounding in outsider insights like intersectionality, multiplicity and multidimensionality).

n24. See Elizabeth M. Iglesias, Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!, 28 Harv. C.R.-C.L. L. Rev. 395, 502 (1993) (concluding that "the practice of liberation legal theory [must aim] at understanding the role of law in maintaining structures that perpetuate relations of domination and subordination in a given society for the purpose of materially promoting that society's transformation.").


n27. See Elizabeth M. Iglesias, Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates, 28 U. Miami Inter-Am. L. Rev. 361, 377-86 (1996-97) (mapping the complex ways in which LatCrit understandings of the reasons for and the nature of Latina/o subordination can be discursively manipulated to consolidate very different political alliances around solidarities of class, culture or nationalism - at the expense of more inclusive and comprehensive anti-subordination agendas that resist reinscribing relations of privilege and subordination along any category of identity).

n28. The Roman Catholic Church long has been vehemently against modern forms of contraception, much less any form of abortion. For instance, the 1968 papal encyclical, Humanae Vitae, positioned the Roman Catholic Church in opposition to contraception. See Pope Paul VI, Humanae Vitae, reprinted in Philosophy and Sex 167-84 (Robert Baker & Frederick Elliston eds., 1984). Christianity, and Roman Catholicism in particular, more generally also are closely allied with patriarchy's hold over both the "public" and "private" spheres of human activity. For an overview of the public/private distinction, see Morton J. Horwitz, The History of the Public/Private Distinction, 130 U. Pa. L. Rev. 1423 (1982); see also Ruth Gavison, Feminism and the Public/Private Distinction, 45 Stan. L. Rev.1 (1992). This alliance is enabled by Christianity's historic obsession with the sexual, which lends itself to the regulation of human personality through human sexuality in a calculated biased way: calculated to valorize heterosexuality as "the" "way of life" and to ensure substantial male control of it. See generally Francisco Valdes, Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins, 8 Yale J.L. & Human. 161, 172-211 (1996).

Of course, patriarchy is a complex phenomenon that transcends any one religion. For a critical history of patriarchy, see Gerda Lerner, The Creation of Patriarchy (1986); Angela L. Padilla & Jennifer J. Winrich, Christianity, Feminism, and the Law, 1 Colum. J. Gender & L. 67 (1991). Though to varying degrees and in varied forms at different times or places, Christianity, sexual moralism and patriarchy repeatedly have been observed as historical correlates. See, e.g., Peter Brown, The Body and Society: Men, Women and Sexual Renunciation in Early Christianity (1988); James A. Brundage, Law, Sex, and Christian Society
in Medieval Europe (1987); Robin Lane Fox, Pagans and Christians (1989); see also Pierre Chouin, A Chronicle of the Last Pagans (B.A. Archer trans., 1990). More importantly, this ideological correlation continues vividly to be enacted even today by various Christian political groups, who mix the power of religion with "traditional values" to espouse cultural practices and state policies that obviously and intentionally favor men and straights over women and Queers. See generally infra notes 122-131 and accompanying text.

n29. By "sexual minorities" we mean an inclusive category embracing multiply diverse lesbians, bisexuals, transsexuals, transvestites, transgendered persons and gay men; though each of these classifications represent different sex/gender/sexual orientation configurations, they all stand in opposition to heteropatriarchy. They all have a common interest in heteropatriarchy's dismantlement, and, hopefully, in a broader norm of sex/gender liberty and diversity. Without occluding multidimensional difference or variance within or across these classifications, we emphasize strategic and substantive commonality, if not social affinity, in pursuit of anti-subordination ideals.


n31. See Valencia, supra note 12, at 473; Hartigan, supra note 13, at 487; Ota, supra note 14, at 444.


n33. This concern over the "effects" of LatCrit and other outsider interventions in social policy debates and legal reform strategies has generated a call for outcrits to evaluate the "political impact" of our work. See, e.g., Sumi K. Cho, Essential

n34. See Elizabeth M. Iglesias, Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality, 49 Vand. L. Rev. 869 (1996) (analyzing the way images of women, organized in part around the discourses of marianismo, operate in complicated ways to both undermine and enable the expression of female autonomy in Latin culture(s), and the broader implications of these cultural elements in the feminist legal struggle against male supremacy).


n37. For readings on the "public/private distinction," see sources cited supra note 28.

n38. See, e.g., Colloquium, International Law, Human Rights and LatCrit Theory, supra note 1 (presenting various works which articulate this form of analysis within LatCrit theory).

n39. We must, in other words, use narrative to help make sense of the gaps, ambiguities, contradictions or falsehoods to be found in the larger record of social and legal experience that we also can, and must, access through conventional means of scholarship. For effective displays of LatCrit narrative, see Elvia Arriola, Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self, 2 Harv. Latino L. Rev. 397 (1997); Berta Esperanza Hernandez-Truyol, Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 Harv. Latino L. Rev. 199 (1997); Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience, 85 Cal. L. Rev. 1259 (1997), 10 La Raza L.J. 173 (1998); Celina Romany, Gender, Race/Ethnicity and Language, 9 La Raza L.J. 49 (1996).

n40. We consider "the United States at the millennium" to be the appropriate level of generality to begin this analysis because this country and its laws serve as the political, cultural and legal unit of formal and informal power relations that we study in this Afterword, and because we stand at the cusp of the 21st century.


n44. For a critical historical overview of Spanish conquest and plunder in the region now known as the southwestern United States, see generally Ramon A. Gutierrez,

n45. For a discussion of the phrase "In God We Trust," see Keeping God's Name in Mint Condition, Time, Dec. 9, 1991, at 66.

n46. The use of sectarian prayers in social, educational, occupational or governmental settings has sparked considerable and vigorous commentary. See, e.g., M. Stanton Evans, Reexamining the Religious Roots of Freedom, USA Today Magazine, Sept. 1, 1995, at 90.

n47. The tax-exempt status of religious organizations, their wealth and activities, similarly has sparked considerable public controversy. See, e.g., Elliott Beard & Elizabeth Lesly, Pennies from Heaven; It's Time for Uncle Sam to Pass the Collection Plate; Tax the Churches, Washington Monthly, Apr. 1991, at 40.

n48. Christian groups have used the mass media to proselytize "round the clock" since the early days of broadcasting. See, e.g., Carnegie Samuel Calian, Redeeming the Wasteland? Christian TV Increasingly Uses Entertainment to Spread its Message, Christianity Today, Oct. 2, 1995, at 92.


n50. Invocation of the Judeo-Christian "creator" and the social imperatives mandated to his creations have appeared in the opinions of the land's highest tribunal at key moments in the nation's social history specifically to bless juridically state acts of subordination directed against women and sexual minorities. See, e.g., Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 141 (1873) (describing equal employment opportunity in the legal profession for women as "repugnant to "the nature of things") (Bradley, J., concurring); Bowers v. Hardwick, 478 U.S. 186, 196-97 (invoking Judeo-Christian dogma as a proper justification for judicial allowance of the criminalization of consensual, adult same-sex male intimacy) (Burger, C.J., concurring). However, the judicial invocation of Christian beliefs to justify the use of law in the enforcement of social subjugation is not confined to gender and sexual orientation; until the Supreme Court's ruling in Loving v. Virginia, 388 U.S. 1 (1967), courts similarly relied on prevalent religious precepts to justify antimiscegenation statutes and the racial hierarchy they helped to maintain. Indeed, the Virginia supreme court invoked divine mandates to uphold the statute that the Supreme Court later struck down. Loving v. Commonwealth, 206 Va. 924, 17 S.E.2d 78 (1966). Thus, racial minorities also have experienced the sting of religion's use as a social force to help retain or enact unjust laws. These examples show that religion lends itself to social and political exploitation, sometimes more so than other times. See also infra notes 87-89 and accompanying text (describing similar domestic and hemispheric scenarios).


n53. This reclaimed history and its ideological slant are well known by now. See generally Henry Warner Bowden, American Indians and Christian Missions (1981); Native American Testimony: A Chronicle of Indian-White Relations from Prophecy to the Present, 1492-1992 (Peter Nabokov ed., 1991). This history thus has given rise in recent years to a strong Native American discourse, both within and beyond the law, that seeks to further

n54. See Castañeda, supra note 52, at 238.

n55. See, e.g., supra note 44 and sources cited therein on the European and Christian invasion and domination of this continent; see also Gerard Colby with Charlotte Dennett, Thy Will Be Done: The Conquest Of The Amazon: Nelson Rockefeller And Evangelism In The Age Of Oil (1995) (providing an in-depth account of the way Rockefeller-financed evangelical missions into the Amazon facilitated the penetration of the Amazon and the genocidal liquidation of indigenous tribes).

n56. Their tactics in this determined institutionalization of heterosexism, as reflected in the historical record available to LatCrit theorists today, included the savage and unsentimental destruction of existing families and bonds: one recorded "technique occasionally used to render an obdurate and cocksure Indian submissive was to grab him by the testicles and to twist them until the man collapsed in pain." See Gutierrez, supra note 44, at 76. The sexual diversity destroyed systematically by European campaigns against indigenous sexual egalitarianism has been well documented in various recent works. See, e.g., Judy Grahn, Another Mother Tongue: Gay Words, Gay Worlds 53 (1984); Will Roscoe, The Zuni Man-Woman (1991); Walter L. Williams, The Spirit and the Flesh: Sexual Diversity in American Indian Culture (2d ed. 1992); see also, e.g., Living the Spirit: A Gay American Indian Anthology (Will Roscoe ed. 1988).

n57. See infra notes 124-142 and accompanying text.


n59. Religious discourse has been a rhetorical and political resource in the fundamental consolidation of the military dictatorships that sent Latin America into its multiple dirty wars. See, e.g., Frank Graziano, Divine Violence: Spectacle, Psychosexuality, & Radical Christianity in the Argentine "Dirty War" (1992) (describing Argentine junta regularly seen in public with Catholic hierarchy); see also, The Politics Of Antipolitics: The Military In Latin America 238-49 (Brian Loveman & Thomas M. Davies, Jr. eds., 2d ed. 1989) (providing speeches of Augusto Pinchocet, denying that political liberty, in a nationalistic and Christian Chile, includes the liberty to promote ideas that answer to a Marxist ideology). The Chilean Constitution of 1980, for example, declared the family to be the "fundamental nucleus of society" and, in institutionalizing Pinochet's ideological warfare against the left, criminalized doctrines considered to "attack the family, or propagate ... a conception of the society, the State or the legal order of a totalitarian character or based on the class struggle." Chile Const. (1980) art. 8 (abrogated by 1989 constitutional amendments). For an early historical incident, see the story of the Ecuadorian military dictatorship established under Gabriel Garcia Moreno, creator of the "Republic of the Sacred Heart of Jesus," Alain Rouquie, The Military And The State In Latin America

n60. See generally Sara Diamond, Spiritual Warfare: The Politics Of The Christian Right (1989) (providing a comprehensive account of the domestic and international political agenda that drives the Christian right in the U.S.).


n62. Id. at 193.

n63. Id.


n65. Harris, supra note 23, at 748.


n68. Id.


n71. See supra notes 12-13, 52 and accompanying text.

n72. See Valencia, supra note 12, at 469 (expressing a personal desire and unilateral decision to infuse the author's religion into the formal program of the LatCrit II conference).

n73. See Pat K. Chew, Constructing Our Selves/Our Families: Comments on LatCrit Theory, 19 Chicano-Latino L. Rev. 297 (1998). Indeed, Asian American legal scholars have been instrumental in the cultivation and development of LatCrit theory from the outset. See, e.g., infra note 149 and sources cited therein on LatCrit works by Asian American scholars. The same is true for Black and other non-"Latino"-identified scholars. See, e.g., Culp, supra note 66; Espinoza & Harris, infra note 145. This point is further made by various contributions to this symposium. See, e.g., Anthony Paul Farley, All Flesh Shall See It Together, 19 Chicano-Latino L. Rev. 163 (1998); Jennifer Russell, Constructing Latinoness:
Ruminations on Reading Los Confundidos, 19 Chicano-Latino L. Rev. 177 (1998). These authors and works illustrate the rich diversities that inhabit LatCrit theory and demonstrate that scholars of multiple racial/ethnic identifications can adopt the position of a LatCrit scholar. These authors and works thus display how "LatCrit" signifies a political identity with critical anti-subordination commitments to Latinos/as and other outgroups locally and globally. See generally Valdes, supra note 23, at 52-59 (summarizing key features of LatCrit theory as reflected in the LatCrit I symposium).

n74. See Castañeda, supra note 52.


n77. See, e.g., Why Narrative? Readings In Narrative Theology 5 (Stanley Hauerwas & L. Gregory Jones eds., 1989) (assembling a compelling and enlightening set of readings illustrating and explaining the multiple uses of narrative in "understanding issues of epistemology and methods of argument depicting personal identity, and displaying the content of Christian convictions.").

n78. See, e.g., Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan. L. Rev. 807 (1993); see also Valdes, supra note 69, at 2 n.3 (providing additional sources and information on legal storytelling and critiques of it).

n79. See, e.g., Jane Macartney, China stamps out Catholic underground church - group, Rueters (Jan. 10, 1997) <http://www.elibrary.com/getdoc.cgi?id=1007626@library d&dtype=00&dinst>; Religious persecution, 124 Commonweal 5(2), P3 (Aug. 15, 1997) <http://www.elibrary.com/getdoc.cgi?id=1224086@library e&dtype=00&dinst> (noting widespread persecution of Christians around the world both by governments in countries like China and Sudan and by non-state actors in countries like Algeria and Egypt and commenting that international human rights activists often ignore the religious persecution of Christians: "Because Christianity has been the dominant faith of the West, more likely to be in league with power than its victim, the persecution of Christians around the world often goes unnoticed; when pointed out, it is not often forthrightly acknowledged; when acknowledged, it is rarely protested."); Mary Jo McConahay, Church Drawn into Central America's New Battlefield - The Economy, Jinn P9 (Feb. 5, 1996) <http://www.pacificnews.org/pacificnews/jinn/stories/2.03/960205-guatemala.html> (reporting on the Archbishop of Guatemala's announcement of the publication of a martyrology listing hundreds of unarmed religious killed for having "opted for the poor" over the last 35 years).

n80. See Mayer, supra note 59, at 63 (articulating a compelling critical analysis of the political agendas underpinning the articulation of religious fundamentalism in Islamic countries).

n81. Hartigan, supra note 13, at 489.

n82. Id.

n83. See John A. Hardon, S.J., The Catholic Catechism 458-65 (1975) (articulating official church doctrine on Christ's full presence in the Eucharistic sacrifice). For a general history of the Roman Catholic Church, see Barrie Ruth Straus, The Catholic Church: A Concise History (1992). Of course, much of the Roman Catholic Church's power stems from the secular and sectarian domination it achieved specifically in Europe during the middle ages. See generally R.W. Southern, Western Society and the Church in the Middle Ages (1972). The march to this domination commenced with the conversion of the Roman emperor, Constantine, to Christianity, and to his determined use of state largesse and imperial leverage to establish this religion and its views. See, e.g., Fox, supra note 28, at 609-81. To this day, the Roman Catholic Church and its belief system continue to

Spain's history of imperialism in this hemisphere of course makes it the "mother country" of the states that now occupy much of this hemisphere. See supra note 44 and sources cited therein on Spain's relationship to Latin America.

n84. It bears emphasizing that liberation theology was not born of the crisis of faith that challenges religious conviction in the modern and postmodern societies of the North. That crisis has been one of faith in the existence of God; liberation theology, by contrast, addresses a different crisis - one born of a lived imperative to understand (and transform) the brutalities of human injustice that presupposes already the existence of God. Indeed, liberation theology is precisely "a language for speaking about God [that] is arising among us today out of the unjust sufferings, but also the hopes, of the poor of Latin America." Gustavo Gutierrez, The Truth Shall Make You Free: Confrontations 8 (Matthew J. O'Connell trans., 1990). Gutierrez explains its origin like this:

In recent decades the church's life and thought in its Latin American setting have been marked by what we may call "the irruption of the poor." This phrase means that those who until now were "absent" from history are gradually becoming "present" in it. This new presence of the poor and oppressed is making itself felt ... within the church, for there the poor are increasingly making their voices heard and claiming openly their right to live and think the faith in their own terms. The rise of the basic ecclesial communities is one expression of this phenomenon; the theology of liberation is another.

Id. at 8 (emphasis added).

n85. Hardon, supra note 83, at 36, quoting First Vatican Council, Dogmatic Constitution on the Catholic Faith 3 (1792) ("By divine and catholic faith everything must be believed that is contained within the written word of God or in tradition, and that is proposed by the Church as a divinely revealed object of belief, either in a solemn decree or in her ordinary, universal magisterium.").

n86. Thus, for example, it would be heresy to assert that Catholic doctrines produce a conflict between reason and faith. "If human reason, with faith as its guiding light, inquires earnestly, devoutly and circumspectly, it reaches, by God's generosity some understanding of mysteries, and that a most profitable one. It achieves this by the comparison with truths which it knows naturally and also from the inter-relationship of mysteries with one another and with the final end of man." Id. at 37-38.

n87. See Graziano, supra note 59, at 19.


n89. The story of the Sanctuary movement is a story of the way a shared commitment to live the reality of their Christian faith led some brave people to challenge, at great personal risk, the master-narratives of national security and communist aggression through which the Reagan administration, at that time, legitimated its homicidal foreign policies. They not only confronted and acknowledged increasing evidence that the U.S. government was then engaged in financing and, in many instances, coordinating the indiscriminate slaughter of massive numbers of innocent people in Guatemala, El Salvador, and Nicaragua; they also put themselves materially on the line by defying the government's claim to exclusive authority to interpret domestic and international laws. For one account of the movement, see Barbara Bezdek, Religious Outlaws: Narratives of Legality and the Politics of Citizen Interpretation, 62 Tenn. L. Rev. 899 (1995).
n91. Gutierrez, supra note 84, at 20.
n93. Id.
n94. Id.


Without a real commitment against exploitation and alienation and for a society of solidarity and justice, the Eucharistic celebration is an empty action, lacking any genuine endorsement by those who participate in it. This is something that many Latin American Christians are feeling more and more deeply, and they are thus more demanding both with themselves and with the whole Church. 'To make a remembrance' of Christ is more than the performance of an act of worship; it is to accept living under the sign of the cross and in the hope of the resurrection. It is to accept the meaning of a life that was given over to death - at the hands of the powerful of this world - for love of others.

n96. See Iglesias, supra note 24, at 395-403, 467-486 (elaborating an early but comprehensive and systematic analysis interpreting the preferential option for the poor as a call for legal scholarship that strives to liberate the transformative agency of the oppressed, and exploring its implications for a Critical Race Feminist analysis of the structural arrangements constructed by interpretative manipulation of the relationship between Title VII and the NLRA in legal doctrine).

n97. See supra notes 35-37, 66-77 and accompanying text.

n98. Some of the more immediately pressing questions that might usefully guide LatCrit scholars in our initial efforts to link liberation theology specifically to our analysis of legal process and doctrine include the following: what images of community, what conditions of membership, and what understandings of the obligations a community to its members are reflected in legal doctrines that rationalize and authorize the denial of basic human rights, the contraction of legal remedies, the construction of institutional-class structures, the destruction of the environment, the militarization of national borders, the dispossession of the poor, the purchase of political influence, and the monopolization of economic resources? How do these images of community, the legal doctrines they rationalize, and the material realities they help to structure and organize appear when examined through the lens of liberation theology?

n99. See, e.g., Chung Hyun Kyung, Struggle To Be the Sun Again: Introducing Asian Women's Theology (1993) (recounting the emergence of Asian women's liberation theology as an affirmation of God's revelation in and through the indigenous religions and cultures of Asia); James H. Cone, Black Theology and Black Power (1969) (articulating a theology of liberation grounded in the experiences of racial oppression suffered by African American males); After Patriarchy: Feminist Transformations of the World Religions (Paula M. Cooey et al. eds., 1991) (compiling essays that explore the way feminist theologians have been reinterpreting the tenets of their diverse religions: Hinduism, Islam, Buddhism, Judaism, Christianity and Apache through a feminist conscientization).

n100. See Ota, supra note 14, at 446-47.


n102. See supra notes 17-37 and accompanying text.

n103. The exchanges at LatCrit II over religion, sexuality and other constructs are recounted partially in various of the symposium essays. See, e.g., Ota, supra note 14, at 438-38; Valencia, supra note 12, at 450 n.6 & 468; Hartigan, supra note 13, at 479-80.

n104. See Ota, supra note 14, at 439.
This point is exemplified by Dignity USA, the nationwide gay Catholic group that used to work within the American Catholic Church until the Vatican ordered church functionaries in the mid-1980s to cease any interaction with the gay group, calling Dignity members "disordered" and morally "evil" because they are gay. See Richard N. Ostling, Gays vs. the Vatican: San Francisco's Bishop Forbids Masses for Dignity, Time, Dec. 5, 1988, at 60. Dignity responded with its own letter challenging that characterization and asserting the wholesomeness of same-sex intimacies and families, but the group was expelled from Church-owned facilities across the country. See Bill Kenkelen, Gays, the Church and a Fight for Dignity: A "Manifesto" Attacks Catholic Teaching on Sex, San Jose Mercury News, Sept. 2, 1989, at 10C. Since then, Dignity has dwindled from 100 chapters nationally to a handful, though it continues to operate independently. For instance, the chapter in Sacramento, California continued to operate, in Church-owned facilities, until the mid-1990's when it was expelled and later dissolved. See Bill Lindelof, Gay Catholics Dissolve Dignity, Sacramento Bee, Apr. 10, 1995, at A1.

The longstanding antagonism of organized Christian religions generally to sexual minorities similarly has led some gay and lesbian people to accept our exclusion from Christian groups and institutions, instead forming altogether independent religious organizations. The Metropolitan Community Church, a network of local congregations that minister to sexual minority communities, is an outgrowth of this dynamic. See Reverend Troy D. Perry with Thomas L.P. Swicegood, Don't Be Afraid Anymore: The Story of Reverend Troy Perry and the Metropolitan Community Churches (1990). Despite formal and prevalent discrimination by Christian institutions against sexual minorities, some Christian groups and persons continue to minister to this population, or some portions of it. See, e.g., Verla Lawlor, Gay Teens Often Face Lives of Despair, Isolation; Some Religious Groups Offer a Helping Hand, The Record, Jan. 29, 1998, at H06.

Of course, the Roman Catholic Church in particular also has accumulated over the years a rather notorious history as a hotbed of homosexual activity, and even as a haven for gay men who join the priesthood to evade a frontal social reckoning with their sexual orientation. See generally Homosexuality in the Priesthood and the Religious Life (Jeannine Gramick ed., 1990); see also Rosemary Curb & Nancy Manahan, Lesbian Nuns: Breaking Silence (1985). This complex history and status quo display why Christianity and homosexuality are not entirely distinct phenomena, and why LatCrit theory cannot make the mistake of essentializing or confusing either.

Individuals and groups of Roman Catholics operate at different levels of visibility and informality to alleviate their church's institutionalized homophobia. See generally David Briggs, Bishops Advise Support For Gays; Without Altering Church Doctrine, Austin American-Statesman, Oct. 1, 1997, at A1; Terry Wilson, Church Message Reassures Catholic Parents of Gays, Chi. Trib., Oct. 12, 1997, at C1; The Church's Outstretched Hand, St. Petersburg Times, Oct. 19, 1997, at 2D.

See, e.g., Valdes, supra note 58, at 112 n.308.

See supra notes 20-21 and accompanying text.

See, e.g., Damian Thompson, Homosexual Restrictions are Justified, Says Vatican, The Daily Telegraph, July 24, 1992, at 2 (describing Vatican report stating that discrimination is justified against homosexuals in certain circumstances); Pope, Gay Group Spar Over Adoption, Sun-Sentinel, Feb. 21, 1994, at 6A (describing how Pope John Paul II criticized the European Parliament for adopting a resolution stating that homosexual couples should be allowed to marry and adopt children); see also Pope Reminds Catholics of Ban on Contraception, The Buffalo News, Mar. 3, 1998, at 2A (reporting papal affirmation of Roman Catholic opposition to contraceptive or reproductive choice for women).
n110. See Ota, supra note 14, at 439-40.

n111. See Iglesias, supra note 101, at 201-03 (critical race feminism should be a direct and compelling reminder to LatCrit theory to develop in ways that engage and respect women's claims of autonomy, dignity and self-determination); Iglesias, supra note 34, at 871-80 (mapping out a critical race feminist analysis of the way female subordination is effected through the social, legal and cultural regimentation of heterosexuality).

n112. See, e.g., Valdes, supra note 58, at 344-77 (outlining one view of Queer legal theory).

n113. See generally Catharine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law (1987) (critiquing the use of gendered sexuality by men and the state to subordinate women both sexually and socially).

n114. See, e.g., Valdes, supra note 58, at 110-18 (discussing the inter-relation of naturality, normality, morality in the regulation of same-sex sexuality in particular).


n116. See, e.g., Bowers v. Hardwick, 478 U.S. 186 (1986). The very same Georgia statute upheld by the Bowers Supreme Court when applied to two male adults in consensual private same-sex activity subsequently was struck down by the state courts when applied to a married couple. Ironically, the state court's invalidation of the statute as unconstitutional relied on the Supreme Court's pre-Bowers privacy jurisprudence. See Francisco Valdes, Diversity and Discrimination in Our Midst: Musings on Constitutional Schizophrenia, Cultural Conflict and "Interculturalism" at the Threshold of a New Century, 5 St. Thomas L. Rev. 293, 332 n.201 (1993). The result is constitutionally curious, as it makes the statute's validity turn on the non/coincidence of sex in a private, consensual coupling.


n118. Id. at 266.

n119. Id.

n120. Id.

n121. Id. at 270-71.

n122. Id. at 274.

n123. For a recent incisive critique of this institution, see Martha Albertson Fineman, The Neutered Mother, The Sexual Family, and Other Twentieth Century Tragedies 150-51 (1995).


n125. See Iglesias, supra note 34, at 968-90 (showing the tremendous - legally sanctioned - sexual, economic and social vulnerability of women who cannot or do not conform to dominant norms that channel the expression of sexual desire and the conception of children into the framework of a heterosexual marriage - even as class and race can substantially restrict the feasibility of marriage and the viability of the nuclear family it is designed to promote). For additional recent critiques from a Critical Race Feminist perspective, see Twila L. Perry, The Transracial Adoption Controversy: An Analysis of Discourse and Subordination, 21 N.Y.U. Rev. L. & Soc. Change 33 (1994) (analyzing racist images of family in transracial adoption); Dorothy Roberts, The Unrealized Power of Mother, 5 Colum. J. Gender & L. 141 (1995) (examining impact of family law on African American women). For recent critiques of dominant "family" arrangements from a sexual minority perspective, see generally Patricia A. Cain, Same-Sex Couples and the Federal Tax Laws, 1 Law & Sexuality 97 (1991); Barbara J. Cox, Alternative Families:


n127. For a broad critique of the way women's sexual autonomy is restricted and suppressed by social practices and legal regimes influenced by and organized around religious norms and cultural representations that negate the interdependence and inter-connection of sexuality and spirituality in human experience, see Iglesias, supra note 34, at 934-943 (examining the psycho-sexual meanings embedded in the ritual practice of sacred prostitution as practiced in the ancient matriarchies that flourished before the hegemonic dominance of the one male god of Judeo-Christianity); 915-929 (examining the cultural logic of maternal authority in the matrifocal family arrangements that appear in some Black and Latin communities).

n128. For an effort to introduce the feminine into an account of the mystery of the Trinity, see Leonardo Boff, Trinity and Society 10 (Paul Burns trans., 1988). Not coincidentally, Boff is a liberation theologian, and his efforts to insert the feminine into the Trinitarian mystery represent a departure from mainstream Catholic orthodoxy, in which all three persons of God are represented as male. See, e.g., Hardon, supra note 83, at 63-67.

n129. See, e.g., supra note 50 for discussion of key rulings hinged on religious precepts. The status quo represents a fairly systematic use of formal law to repress sexual minority identities and communities. See generally Developments in the Law - Sexual Orientation and the Law, 102 Harv. L. Rev. 1508 (1989); see also Valdes, supra note 58, at 31 n.83 and sources cited therein on sexual orientation discrimination.

n130. See, e.g., Colloquium, supra note 38 (presenting various works that center internationalist analysis in LatCrit Theory).

n131. See generally Critical Race Feminism: A Reader (Adrien Katherine Wing ed., 1997). However, mainstream feminist legal scholars have begun to pay increased attention to the substantive and political imperatives that underlie the value of transnational and transcultural discourses, projects and communities. See, e.g., Catharine A. MacKinnon, Rape, Genocide and Women's Human Rights, 17 Harv. Women's L.J. 5 (1994) (critiquing sexual terror against women as war tactics); Frances Elisabeth Olsen, Feminism in Central and Eastern Europe: Risks and Possibilities of American Engagement, 106 Yale L.J. 2215 (1997) (linking domestic feminist theory with political developments in the former Soviet Bloc); Ruthann Robson, The State of Marriage, 1 Yearbook of New Zealand Jurisprudence 1 (1997) (comparing same-sex marriage issues in New Zealand, the United States and Canada to call for matrimony's abolition as a state institution).

313 (1997) (on the importance of particularity in LatCrit theory).

n133. Cod. Civ., tit. I, cap.I, art. 113 (Guat.) ("La mujer podra desempeñar un empleo, ejercer una profesion, industria, oficio o comercio, cuando ello no perjudique el interes y cuidado de los hijos ni las demas atenciones del hogar." translated by authors as "A wife may accept employment, engage in a profession, industry, public office or commercial activity when such activity does not undermine the interests and care of the children nor the performance of other domestic duties.").

n134. Cod. Civ., tit. I, cap.I, art. 114 (Guat.) ("El marido puede oponerse a que la mujer se dedique a actividades fuera del hogar, siempre que suministre lo necesario al sostenimiento del mismo y su oposicion tenga motivos suficientemente justificados. El juez resolvera de plano lo que sea procedente." translated by authors as "The husband may prevent his wife from dedicating herself to activities outside the home, so long as he earns enough to maintain the household and his opposition is reasonably justified. Whenever necessary, the judge shall determine the appropriate resolution of a dispute as the law requires.").

n135. See Luna, supra note 132, at 340.


n138. As one commentator has noted: "Those attributes that women bring to the labour market by virtue of family obligations and socialisation [sic] are used by employers to select them for the secondary sector... Women's cheap, flexible and disposable labour power, their situation both when employed and unemployed, stems fundamentally from their actual and assumed role in the family." Id. at 318-19, quoting Jackie West, Women, Sex and Class, in Annette Kuhn & Ann Marie Wolpe, Feminism And Materialism 247 (1978).

n139. At the same time, a sustained and critical engagement with Latina/o particularities must also acknowledge, value and respect the degrees of individual and collective self-empowerment Latinas, in particular, have struggled and, at times, succeeded in organizing around heteropatriarchal representations of their maternal identities. See, e.g., Marguerite Guzman Bouvard, Revolutionizing Motherhood: The Mothers Of The Plaza De Mayo (1994) (recounting how political resistance against the forced disappearances during Argentina's dirty war was organized around the politicization of women as mothers). That the power of maternal identities in heteropatriarchal ideology is inadequate to the ultimate task of liberation and may come at the expense of other identity positions women may presently occupy or aspire to create does not negate the real interests women may, as a class, share in protecting and promoting the further enhancement of social, cultural and legal frameworks that foster maternal empowerment from a matrifocal perspective. See Iglesias, supra note 34, at 983-90 (elaborating this argument).


n141. For a critical comparative analysis of these issues in contemporary settings, see Catherine T. Barbieri, Women Workers in Transition: The Potential Impact of the NAFTA Labor Side Agreements on

n142. See, e.g., Iglesias, supra note 101, at 207 (urging LatCrit attention to and intervention in ongoing legal and political struggles to combat neoliberal assaults on the welfare state - both domestically and internationally - by linking the enforcement of human rights to the international economic regimes that regulate trade relations and development finance).


n147. Iglesias, supra note 27, at 377-86 (noting instability and vulnerability of Latina/o political identity and intra-group solidarities to fragmentation and manipulation as a result of the manifold relations of privilege and subordination that are superimposed, in overlapping and divergent layers, upon and within Latina/o communities by the hierarchies - among others - of class, culture, and the inter-state system).

n148. See Guerra, supra note 52, at 353.


n152. Id. at 200.

n153. See Sandrino-Glasser, supra note 150, at 71-75.

n154. Id. at 75-77.


n156. Id. at 225.


(1997) (grounding such ethical vision in the aspiration to objective justice); Iglesias, Structures of Subordination, supra note 24, at 469-78, 486-88 (arguing that the realization of objective justice requires more than an ethical vision or empathetic solidarity, but rather a material transformation of the relations of power/lessness through which privilege is constructed and enjoyed).

n163. See George A. Martinez, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, 19 Chicano-Latino L. Rev. 213 (1998); Iglesias, supra note 162, at 467-69 (arguing that the surest human path towards the universal of objective justice is through the proliferation of empowered political communities and the collective subjectivity created by the collision of their particular perspectives); but see Iglesias, supra note 24, at 473-78 (arguing that just as our evolving approximations toward objective truth depends upon the further emancipation of oppressed perspectives, the actualization of objective justice depends on the redistribution of effective social and institutional power).

n164. It bears emphasis that LatCrit critiques of the Black/White Paradigm seek to counteract only prevailing tendencies toward analyzing and combating racism "exclusively or primarily" in white/black terms. See Perea, supra note 143, at 1219.

n165. These and similar concerns already have begun to be raised. See, e.g., John O. Calmore, Our Private Obsession, Our Public Sin: Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free", 15 Law & Ineq. J. 25, 61 (1997) (cautioning against possible dilution of African American claims or interests).

n166. See, e.g., Chang & Aoki, supra note 149, at 1423-46 (analyzing inter-group relations and politics in Monterey Park, California).

n167. At LatCrit II, a plenary panel was devoted to the issues posed by indigenous populations for LatCrit theory. Of the several panel participants, only Guerra contributed an essay to this symposium. See Guerra, supra note 52.

n168. See, e.g., Montoya, supra note 25, at 351-52.

n169. See Guerra, supra note 52, at 351-52.

n170. Id. at 355-57.

n171. For early accounts of LatCrit origins, see Berta Esperanza Hernandez-Truyol, Invisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 Harv. Latino L. Rev. 199, 202-05 (1997); Valdes, supra note 23, at 3 n. 5; Valdes, supra note 69, at 6-11.


n173. See generally Patricia Cayo Sexton, Spanish Harlem Anatomy of Poverty 9 (1965).


n175. See, e.g., Montoya supra note 25, at 351.

n177. See Castañeda, supra note 52, at 229-31 (combining Spanish and English use).

n178. See Guerra, supra note 52, at 357.

n179. See Castañeda, supra note 52.

n180. See supra notes 171-176 and accompanying text.

n181. See supra notes 23-25 and accompanying text.

n182. See generally supra note 44 and sources cited therein on the European and Christian invasion and occupation of this continent. It bears mention that Spain's sort of imperialism was especially keen on Roman Catholicism, and that Spain thereby serves as the model for church-state relations in many of its former colonies. For further discussion of Spain's influence over, and relationship with, Latin America, see generally Edwin Williamson, The Penguin History of Latin America 233-47, 313-77 (1993); Jean Grugel, Spain and Latin America, in Democratic Spain: Reshaping External Relations in a Changing World (Richard Gillespie et al. eds., 1995).


n185. The tour was a planned program event designed to provide the conference participants with a better understanding of the local political and economic geography. The event was a guided bus tour, with two stops along the way, of various San Antonio areas not usually visited by most. The guide discussed the local and regional political economy that had produced municipal zoning decisions that reflected and perpetuated existing social hierarchies, as manifested materially and presently by the areas we were able to witness. The guide was a longtime Chicana community activist, Maria Antonietta Berriozabal.

n186. Luna, supra note 132.


n188. This literature has been growing in recent years. See, e.g., Newcomers In The Workplace: Immigrants And The Restructuring Of The US Economy (Louise Lamphere et al. eds., 1994); Structuring Diversity: Ethnographic Perspectives on the New Immigration (Louise Lamphere ed., 1992).

n189. See generally Ediberto Roman, Empire Forgotten: The United States's
n190. See, e.g., Avelardo Valdez, Persistent Poverty, Crime, and Drugs: U.S.-Mexican Border Region, in In The Barrios, supra note 187, at 179-84 (recounting economic history of Laredo, Texas and the cities links to the Mexican economy).

n191. For a particularly infamous example of the way stereotypes about Latina/o culture can influence perceptions, attitudes and actual decisions made by judges, consider how the ability to speak Spanish was reinterpreted as a disability likely to condemn the speaker to a life of poverty in Judge Samuel Kiser's 1995 decision which held "in favor of a father's 'right' to prohibit the mother of his daughter from speaking Spanish to the child." Judge Kiser is quoted to have asked the mother: "What are you trying to do? Make her a maid for the rest of her life?" See Challenging Fronteras: Structuring Latina and Latino Lives in the U.S. 3 (Mary Romero et al. eds., 1997).

n192. These imputed group characteristics include fatalism, failed individuation as a result excessive familial entanglements and interdependence reflected for example in the common practice among young Latinas/os to refuse educational or professional opportunities that would require them to move away from their families and a "God will provide" passivity. See, e.g., In The Barrios, supra note 187, at xi, xx-xxi. See Iglesias, supra note 34, at 925-29 (challenging assumptions underlying these representations of Latina/o culture and, in particular, providing an alternative account of the cultural and psychoanalytic logic of Latin cultural practices of familial interdependence and individual self-sacrifice).

n193. See Alex Stepick III & Guilleremo Grenier, Cubans in Miami, in In The Barrios, supra note 187, at 93.

n194. See Johnson, supra note 151, at 205-206.

n195. For further readings, see In The Barrios, supra note 187; Challenging Fronteras, supra note 191; Newcomers in the Workplace, supra note 191.


n197. See supra notes 133-134 and accompanying text.

n198. Patricia Zavella, The Politics of Race and Gender: Organizing Chicana Cannery Workers in Northern California, in Chicana Critical Issues: Mujeres Activas en Letras y Cambio Social 127-53 (Norma Alarcon, et al., eds., 1993) (Zavella identifies the gendered division of labor in the family and the readiness with which men enforce it against their wives as a significant obstacle in organizing women workers).

n199. Employers increasingly are hiring women because women will often accept lower wages and unstable employment conditions more readily than male workers. See, e.g., Susan S. Green, Silicon Valley's Women Workers: A Theoretical Analysis of Sex-Segregation in the Electronics Industry Labor Market, in Women, Men, And The International Division Of Labor, supra note 136, at 273-31. Green notes one important aspect of the new international division of labor: women are increasingly employed over men in industries undergoing rapid internationalization both in the Third World and in the United States. Id. at 274. The increasing employment of women is in turn related to a profit maximization strategy based on employing the cheapest labor "that is the most productive, exploitable and dispensable in order to maximize the opportunity for cutting costs without confronting the resistance of organized labour... Women are invariably proved to be the source of the cheapest labour, regardless of the type of society we consider." Id. at 321; see also Alex Stepick III & Guilleremo Grenier, Cubans in Miami, in In The Barrios, supra note 187, at 83 (noting that Miami's apparel industry was created by the relocation from the North East motivated by the new supplies of...
female labor and the ability to informalize production by sub-contracting to women who worked in their homes).

n200. This move has been addressed by LatCrit scholars in recent years as well. See, e.g., Laura M. Padilla, LatCrit Praxis to Heal Fractured Communities, 2 Harv. Latino L. Rev. 375 (1997).

n201. See supra note 1 and sources cited therein on LatCrit symposia and colloquia.


n203. Id.

n204. See Lopez, supra note 76.

n205. See supra note 23 and sources cited therein on these and similar concepts.

n206. For instance, the experience with legal storytelling, and in particular the nature of the mainstream attack on outsider narrativity, should forewarn LatCrit scholars about the types of critiques that we must anticipate and counter in the first instance. See, e.g., supra notes 77-78 and accompanying text. Our task is to show the groundlessness of those attacks without permitting them to chill or coopt our critical anti-subordination work.

n207. See, e.g., Cho, supra note 33; Culp, supra note 158.

n208. See supra note 1 and symposia cited therein on LatCrit theory during the past several years.


n210. Id. at 332-35.

n211. See generally Peggy C. Davis, Law as Microagression, 98 Yale L.J. 1559 (1989) (articulating the concept of microaggression in critical legal theory).
COMMENT: AN ANALYSIS OF TREATMENT OF UNACCOMPANIED IMMIGRANT AND REFUGEE CHILDREN IN INS DETENTION AND OTHER FORMS OF INSTITUTIONALIZED CUSTODY

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BIO:


I would like to thank my family for their constant love and support. I would also like to give a special thanks to Professor Carolyn Blum for inspiring this research and providing me with the guidance necessary to develop this Article.

SUMMARY: ... The INS could point to no case in which an immigrant minor was abused by an unrelated responsible adult who assumed custody of the minor in lieu of INS detention. ... Therefore, protecting an immigrant minor's psychological welfare is possibly the most important goal in guarding the minor's overall well-being. ... Second, there is the argument that the federal government's goal of regulating community safety and the safety of immigrant minors takes precedence over the immigrant minor's individual liberty interests. ... Finally, even though institutional custody authorizes full liability for the immigrant minor, it also provides full control. ... Because protecting an immigrant minor's psychological welfare is possibly the most important goal in guarding the minor's overall well-being, special emphasis must be placed on establishing international standards for improving conditions in detention facilities, and access to psychological rehabilitation. ...

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I. Introduction

"Over the past decade, the number of refugees throughout the world has more than doubled, and the number continues to grow." n1 At least half of the world's refugees are estimated to be children below the age of eighteen. n2 Traditionally, the flow of immigration consisted of single men who came to the United States to work and then returned to the families they had left behind. n3 Increasingly, entire families and unaccompanied minors are migrating to the United States due to the worsening conflicts in Central America. n4 In the United States, the Immigration and Naturalization Service (INS) arrests thousands of immigrant minors each year. More than 8,500 minors were detained by the INS in 1990, and as many as 70% of them were unaccompanied. n5 "Most of these minors are boys in their mid-teens, but perhaps 15% are girls and the same percentage 14 years of age or younger." n6

Immigrant minors usually arrive in the United States unaccompanied because they "either fled their country without adults, were sent ahead by family members in the hope that they would emigrate more safely, or became accidentally separated from adults during flight. The separation often occurs in southern Mexico...." n7

Thousands of unaccompanied minors who have endured violence in their home countries or while en route to the United States have been, and are still, detained in United States detention centers, refugee camps, or other facilities. These centers, camps, and facilities have a history of housing immigrant minors in disgraceful conditions without access to education, health care, legal services, or other basic necessities. n8 These children are especially vulnerable, yet they possess no "statutory or common law right to appointed counsel or guardians." n9 The INS detention policy only perpetuates this pattern of abuse of immigrant minors. n10

For the purposes of this paper, I will focus on the INS detention policy's impact on refugee children in particular. Due to the conditions that refugee children have already experienced in their war-torn and ravaged home countries before arriving in the United States, these children, more so than immigrant children, are at a greater risk of psychological damage. I will provide an analysis of how the INS detention policy jeopardizes the health and well-being of refugee minors, rather than protecting their interests while they undergo deportation or asylum adjudication proceedings. Alternatives to INS detention, such as
church-sponsored shelters or foster home programs, may not be available due to a lack of funding, or as the INS claims, due to its lack of expertise in placing immigrant minors in alternative custody. However, if refugee minors are to remain indefinitely in INS detention, serious changes must be made to improve: (1) conditions in INS detention centers and in other government facilities contracted by the INS to detain immigrant minors, such as criminal juvenile detention centers; and (2) the INS's policy of detaining unaccompanied minors while they undergo deportation or asylum adjudication proceedings. The INS has not put forth a viable, compelling reason for not releasing these children to responsible unrelated adults, such as family friends, who may be the only ties that immigrant minors have to the United States.

Section II begins this analysis with a historical overview of the law and policy behind the INS detention of unaccompanied minors undergoing deportation or asylum adjudication proceedings. It concludes with a view of the INS's current regulation and detention of immigrant minors.

Before the 1984 INS detention policy, many refugees seeking asylum were quickly processed in mass adjudication, usually admitting their deportability and being deported or repatriated. n11 Unaccompanied refugee minors awaiting an adjudication were released to family members, church groups, or other community assistance organizations. n12 In providing for the release of such minors, the INS Western Region adhered to the practice followed by federal magistrates and the INS in the rest of the country when administering Section 504 of the Juvenile Justice and Delinquency Prevention Act of 1974. n13 Pursuant to Section 504, a juvenile charged with an offense may be released as follows:

To his parents, guardian, custodian, or other responsible party... upon their promise to bring such juvenile before the appropriate court when requested by such court unless the magistrate determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others. n14

Therefore, the pre-1984 INS practice allowed the release of unaccompanied minors who had been apprehended for violating immigration laws to a responsible adult on the assurance that the adult would bring the child to court when necessary. n15 As evidenced by this practice, alien minors are considered to possess some constitutional rights. n16

B. 1984 INS Western Regional Office Detention Policy

In order to manage the custody and detention of minors flowing into California, to assure the maintenance of the minors' welfare and safety, and to protect the INS from possible legal liability, the INS Western Regional Office implemented a sePte policy in 1984, especially for minors. n17 It limited the release of detained minors to "a parent or lawful guardian," except in "unusual and extraordinary cases," when the juvenile could be released to "a responsible individual who agrees to provide care and be responsible for the welfare and well being of the child." n18

Individuals and interest groups, including various church groups, Amnesty International, Lawyers' Committee for Human Rights, International Human Rights Law Group, and Defense for Children International, became concerned by this policy because it resulted in INS detention of many unaccompanied immigrant minors "who posed no apparent risk to the

II. Historical Overview of Law and Policy of INS Detention of Unaccompanied Minors

A. Pre-1984 INS Western Regional Office Detention Policy
community and whose presence at their respective hearings could be ensured by responsible individuals" other than the minors' parents or legal guardians. n19 These groups disputed the INS' alleged concern that its detention policy was meant to promote the minors' welfare and safety. The INS could point to no case in which an immigrant minor was abused by an unrelated responsible adult who assumed custody of the minor in lieu of INS detention. The "responsible adults" that had been taking custody of immigrant minors, in the absence of parents, legal guardians, or close relatives, were primarily human rights and child welfare organizations whose records of child care were spotless. n20

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C. 8 C.F.R. 242.24

During the Flores I litigation, the INS codified its Western Regional policy into 8 C.F.R. 242.24. The Western Regional policy was enjoined by the United States District Court for the Central District of California because it promulgated disjunctive treatment of minors in deportation proceedings and minors in exclusion proceedings. n21 The INS permitted minors in exclusion proceedings to be released, in some circumstances, to adults other than parents or legal guardians, including other relatives and friends.

This new nationwide rule for the detention and release of juveniles provides for the release of minors to adult relatives, other than parents and legal guardians, and release and custody of minors to unrelated responsible adults in "unusual and compelling circumstances." n22 For example, if the child's parents are not in the United States and an adult relative is not available, the minor may be released to an unrelated responsible adult only if the parents travel to a United States consulate and sign a sworn statement before the consular officer which names the responsible adult. n23 This process is extremely burdensome, if not impossible, for many parents in poor and war-torn countries. It also presents a "special problem for orphans, abandoned children, and children who cannot locate their parents" since it is impossible for these minors to determine their parents' whereabouts, much less obtain their sworn statement. n24

Even though the INS regulation theoretically allows minors to be released to unrelated responsible adults in "compelling circumstances," the INS officials in Texas, for example, have asserted that being an orphan does not constitute a "compelling circumstance," and that such minors will not be released from INS custody except for emergency medical treatment or similar reasons. n25 Furthermore, in some Texas cases, the INS imposes severe restrictions on relatives named in the regulation who applied for the minor's release. For example, in one instance, the INS would not accept the relative's driver's license and INS-issued Alien Registration Card with photo as proof of the relative's identity. n26

If the minor is not released, n27 a juvenile coordinator is assigned to locate "suitable placement...in a facility designated for the occupancy of juveniles." n28 The INS can briefly detain the minor in an INS facility designed for juveniles, but the INS must place immigrant juveniles, within 72 hours of their arrest, in a facility meeting or exceeding standards established for the care of immigrant minors. n29 The INS expects that immigrant minors will remain in its custody an average of only 30 days. n30

[*595] In promulgating this regulation, the INS considered the likelihood of the appearance of immigrant minors at future proceedings if they were released. n31 However, it claimed that its principal reason for the regulation was the theory that unless it was able to conduct a comprehensive home study of the proposed child custodian, the child's own interests would be better served by INS detention. n32 The INS claimed that if it released a child to an unrelated adult based on a determination made without a home study, it could be subject to liability if the child were harmed. n33

The same civil liberties organizations who challenged the INS Western Regional policy also challenged the INS' claim that detaining immigrant minors would protect the INS from possible legal liability. n34 This argument was rejected by the en banc panel of the Ninth Circuit reviewing Flores II. It found little indication that the INS would be subject to liability for releasing a minor to an unrelated adult without a home study, because such a study is "concededly beyond the [INS'] expertise." n35

The Flores II court also ruled that the INS may not determine that detention serves the best interests of immigrant minors in the absence of evidence that release would place the minors in danger of harm. n36 It relied on the United States Supreme Court's decision in DeShaney v. Winnebago County Department of Social Services. n37 The DeShaney court held that a state agency would not be held liable for leaving a minor in the custody of an adult despite evidence that the minor could be harmed. n38 Here, it is important to note that the INS has less child welfare expertise than the state agency in DeShaney. The DeShaney court held that a "state does not become the permanent guarantor of an individual's safety by having once offered him shelter." n39
D. Reno v. Flores

Reno v. Flores was a class action suit initiated to enjoin the blanket detention of immigrant minors at INS detention facilities. Jenny Lisette Flores was 15 when she fled the violence of El Salvador and came to the United States in 1985. n41 She hoped to join her aunt who was an American citizen living near Los Angeles. n42 However, she was arrested by the INS which handcuffed, strip searched, n43 and placed her in a juvenile detention center where she spent the next two months waiting for her deportation hearing. n44 Furthermore, the INS facility in which Flores and other minors were detained provided few opportunities for recreation, had no educational programs, and some of the minors had to share bathrooms and sleeping quarters with unrelated adults of both sexes. n45

According to the INS, Flores had not been convicted of any crime, and was not a flight risk or a threat to herself or the community. n46 However, her aunt, who was a blood relative, was not among the class of adults to whom the INS, at the time, would release unaccompanied minors. n47 The United States District Court ordered the INS to release Flores on bond after she challenged the regulation against the release of immigrant minors to third party adults. Flores' suit also accused the INS of using detained minors as "bait" to lure illegal immigrant parents into custody. n48

Overall, the district court ordered the INS to substantially improve its treatment of detained immigrant minors. A compromise in the form of a Juvenile Care Agreement provided more favorable detention conditions, but did not expand the class of responsible adults to whom detained immigrant minors could be released. The Ninth Circuit Court of Appeals upheld the district court's order, but the Bush administration appealed to the United States Supreme Court in the hopes of returning to the policy enjoined by the district court. n49

In Reno v. Flores, n50 the Supreme Court held that: (1) the regulation allowing detained immigrant minors to be released only to their parents, legal guardian, or close relative, except in unusual and compelling circumstances, does not facially violate substantive due process; (2) INS procedures do not deny immigrant minors procedural due process; and (3) the regulation does not facially exceed the Attorney General's discretion to set terms for the release of arrested minors. n51 The Reno court described the arrangements as "legal custody" and not "detention" because the facilities in which immigrant minors are detained are "not correctional institutions, but facilities that meet "state licensing requirements for the provision of shelter care, foster care, group care, and related services to dependent children." n52 Furthermore, they are "in an open type of setting without a need for extraordinary security measures." n53 The facilities must conform with "applicable child welfare statutes and generally accepted child welfare standards, practices, principles and procedures." n54 They must also be equipped with services such as physical care and maintenance, individual and group counseling, education, family reunification services, recreation and leisure-time activities, access to religious services, visitors, and legal assistance. n55

The Court addressed the issue of whether a minor who has no available parent, legal guardian, or close relative, and for whom the government is responsible, has the right to be placed in the custody of a willing and capable unrelated adult rather than in a government-operated or government-chosen child-care institution. n56 It concluded that, besides the case at bar which was reversed, no other court:

Has ever held that a child has a constitutional right not to be placed in a decent and humane custodial institution if there is available a responsible person unwilling to become the child's legal guardian but willing to undertake temporary legal custody...; the alleged right certainly cannot be considered "so rooted in the traditions and conscience of our people as to be ranked as fundamental.' Where a juvenile has no available parent, close relative, or legal guardian, where the government does not intend to punish the child, and where the conditions of governmental custody are decent and humane, such custody surely does not violate the Constitution. n57

Overall, the Court determined that as long as institutional custody is not unconstitutional in itself, it does not become unconstitutional because it is considered less desirable than another arrangement for a particular child. n58 Moreover, the Constitution does not require child care institutions operated by the state to substitute, wherever possible, private non-adoptive custody for institutional care. n59 The Constitution does require that minimum standards of institutional custody be met, and that a child's fundamental rights cannot be harmed. n60 In conclusion, the court ruled that a decision to go beyond those basic requirements, and to give a particular child's aditional interests "priority over other concerns that compete for public funds and administrative attention... is a policy judgment rather than a constitutional imperative." n61
E. Current Regulation and Detention of Minors

Due to the INS's current detention policy, many unaccompanied immigrant minors cannot arrange for an adult - to whom the INS will release custody - to provide them assistance and a temporary home during deportation or asylum adjudication proceedings. n62 Therefore, these children are incarcerated for months and often for more than a year until their hearings. n63 The boredom and institutional setting often overwhelm the minors, and force them to abandon their asylum requests and seek voluntary deportation. n64 Although there is no substantive evidence that routine strip searches of immigrant minors are still conducted, conditions in INS detention centers effectively remain as they were before the Flores I and II litigation.

III. Consequences of INS Detention for Immigrant and Refugee Children

A. INS Detention Conditions

The INS detention policy has created an expansion of detention facilities in rural Florence, Arizona and El Centro, California, along with six facilities in South Texas: Los Fresnos, Raymondsville, Port Isabel, Rio Hondo, Brownsville, and San Benito. n65 Collectively, these facilities are reportedly uninhabitable, unsafe, and have failed to guarantee a right of access to legal counsel for detainees.

1. Habitability

Generally, INS detention facilities are comparable to minimum and medium security prisons, but many asylum-seekers are detained in conditions far worse than those of criminal inmates, often for more than one year. n66 One site in Texas has been termed "El Corralon" (The Corral), while another was once a Department of Agriculture culture pesticide storage facility. Many immigrants are detained in fenced-in shacks, tents, and makeshift shelters that are barely habitable and quite dangerous. n67 Some detention facilities also operate above their capacity. For example, on October 3, 1994, the INS Daily Population Report stated that the Krome, Florida facility had a capacity of 200 people but it held 445 detainees. n68 Similarly, the same report stated that the Los Fresnos, Texas facility had a capacity of 350 people but it held 674 detainees. n69

2. Security

INS detention facilities have also proven unsafe, particularly for minors. For instance, in 1989, an INS guard was convicted of sexually assaulting detained immigrant minors. n70 There are also reports from immigrant minors in detention in Texas INS facilities that they are grabbed, pushed, shoved to the ground, verbally abused by staff and threatened with deportation. n71 Minors also report fear of other detainees. Some immigrant minors have been robbed, threatened, roughed-up and harassed at night by other detainees in these INS facilities. n72

3. Prison-like Conditions

Each INS detention facility also maintains prison-like conditions which may prove threatening to immigrant minors. Each facility is locked and secured, generally with fences and barbed wire. n73 The INS detention facility in San Diego, California is the most prison-like. Each of its barracks is secured by fences, barbed wire, automatic locks, and observation areas. Furthermore, the entire complex is secured by a high security fence (16-18 feet high) and barbed wire, and watched by uniformed guards. n74

4. Access to Counsel

While in INS detention, immigrant minors have traditionally been afforded little access to legal assistance, telephones, or other means to prepare their legal cases. n75 For instance, in 1990, over 65% of the detained immigrant minors in Texas reported very limited access to phones, and were usually allowed to use them only at night, when legal offices were closed. n76 When minors do talk on the phone or meet with legal counsel, International Educational Services n77 staff frequently listen in on other phone extensions, or ask the minors what they discussed with their counsel. n78

5. Delays in Adjudication

With respect to their asylum processes or deportation hearings, minors often face long delays, largely due to case rescheduling and uncoordinated dockets, during hearing and appeal proceedings. A great deal of pressure is put on these children in an attempt to force them to adjudicate quickly. n79 Otherwise, they could be detained for more than a year. n80

Besides all of the above, the INS treats unaccompanied minors like common criminals by handcuffing them during transit and by requiring that they wear jail clothes. n81 Even though present INS detention conditions have mildly improved over recent years, they still fail to provide minors with the protection and rights that they deserve while awaiting deportation or asylum adjudication. n82
It is extremely difficult to gage the degree to which changes in INS detention conditions have been thoroughly made and properly followed. For example, it is stipulated that, even with the standards of detention mandated in Reno v. Flores and the lower courts, minors as young as five years old, with unrelated responsible adults willing to assume custody of them, are still detained under prison-like conditions in INS camps and lock-up facilities. n83

These conditions are particularly harmful to immigrant minors who have no family members in the United States to protect their interests, and who know nothing of the rights to which they are entitled under United States law. The INS is not an expert in child care or welfare, and should not bear the sole responsibility of providing for immigrant minors pending their respective cases.

B. Long-Term Effects of Detention on Minors

Even after release from detention, studies indicate that minors continue to suffer physical and psychological problems. Generally, immigrant minors are at a great risk of psychological damage due to the traumatic circumstances they have experienced in their home countries and during their travels to the United States. Upon arrival in this country, at least 50% of these children already suffer from clinically significant levels of post-traumatic stress disorder. n84 The INS claims that its detention policy provides minors with the requisite "comprehensive and professional" care that they need. n85 However, access to psychiatric care is a frequently cited problem at INS detention facilities. n86

In an informative study, South African health officials studied the physical and psychological effects of detention on some of the 9,800 minors detained in South Africa's 1986 "state of emergency." Their studies determined that minors continued to suffer from physical and psychological problems long after their release from detention. This study is relevant because the detention conditions of the minors in South Africa were incredibly similar to the detention conditions in INS detention facilities. n87 Therefore, the concern is that detained alien minors in INS detention facilities may suffer the same or similar psychological and physical effects as those suffered by the detained minors in South Africa.

Detention by the government also stigmatizes minor children even if they are later proven to be citizens, legal immigrants, or entitled to political asylum. n88 For those minors who are or will be erroneously institutionalized or detained, the consequences that they will suffer are tragic. "Children in INS detention centers enjoy, at best, very limited educational and recreational opportunities. They are away from family and friends; every aspect of their daily life is regulated by strangers. They have very little privacy, may be shackled and handcuffed, and lead a very regimented life." n89 These potential harmful effects of detention are precisely one reason why federal policy regarding juvenile detention for criminal conduct (rather than suspicion of deportability or illegal immigrant status) allows release to responsible, unrelated adults, and not simply the narrow list of parents, close relatives, or legal guardians to whom the INS allows the release of unaccompanied immigrant minors. n90

Childhood is a vulnerable time, and those who are erroneously institutionalized during these sensitive and impressionable years may bear scars for the rest of their lives. n91 Therefore, protecting an immigrant minor's psychological welfare is possibly the most important goal in guarding the minor's overall well-being. Refugee immigrant minors have already endured abuse while in their home countries and while en route to the United States. Their psychological welfare should be of primary concern to those deemed responsible for their custody pending the adjudication of their immigration or asylum cases.

C. Arguments in Support of INS Detention of Alien Minors

Despite the evidence that immigrant minors have traditionally been mistreated and harmed as a result of INS detention, there still exist arguments in favor of INS detention of unaccompanied immigrant minors. The first is that detention of alien minors is not punishment, but a "potential solution to an urgent societal problem," n92 presumably that of high levels of legal and illegal immigration into the United States. People are concerned that the United States has lost control of its borders. n93 With large numbers of undocumented immigrant minors arriving in the United States, the current regulation of immigrant minors helps to control and update the number of immigrants in custody. n94 There is a clear congressional desire to discourage immigrant minors from entering the United States illegally. The Attorney General has determined that the wave of undocumented immigrants and "their effect on social services, economic resources, and the availability of statutory avenues of relief, have caused the need for strict applicability"of the current regulation. n95 Furthermore, the Attorney General has complete control over immigration matters because of national safety and sovereignty concerns; border control and immigrant detention is part of this power. n96
Second, there is the argument that the federal government's goal of regulating community safety and the safety of immigrant minors takes precedence over the immigrant minor's individual liberty interests. n97 It is believed that the INS's detention policy is rationally related to a governmental interest in "preserving and promoting the welfare of the child." n98

Third, it is assumed that the "release of an immigrant juvenile could potentially affect United States foreign relations if the child is harmed." n99 As stated earlier, however, there is little indication that such release places minors in danger of harm. n100

Fourth, "the INS could also be held liable for releasing a juvenile to an unrelated adult." n101 The INS claims that if it releases a child to an unrelated adult based on a determination made without a comprehensive home study of the proposed custodian's home, it could be subject to liability if the child is harmed." n102

Fifth, children are subject to parental control, and if this fails, the state has a parens patriae role. n103 The government's power and obligation to care for juveniles in the absence of their parents or guardians has been recognized "through the customs and traditions of the United States." n104

Finally, even though institutional custody authorizes full liability for the immigrant minor, it also provides full control. This way, [*605] the INS will know at all times where the minor is and how he or she is being treated, and it does away with concern over whether or not the minor will appear for his or her immigration hearing. n105

D.

The Alleged Real Reasons Behind INS Detention of Alien Minors

Despite these arguments in favor of detention of immigrant minors, documented conditions in INS camps or facilities and other institutions contracted by the INS to detain unaccompanied immigrant minors indicate that the INS's primary justification for detention is not the minors' interest. It is not apparent that the safety of immigrant minors, which the INS is presumably so concerned about, is being protected. The INS's primary reasons for the detention of unaccompanied immigrant minors are apparent.

As indicated above, the United States experiences a wave of immigrants entering its borders each year. Therefore, the proponents of the current detention regulation argue that the detention of immigrant minors is intended by the INS to control their numbers, and presumably their effect on social services and economic resources. n106 However, opponents of the current detention regulation argue the regulation is intended to deter immigrant minors from even entering the country at all. Furthermore, opponents argue the regulation is meant to lure the undocumented parents of detained immigrant minors into the government's custody. n107

IV. Detention of Juvenile Delinquent Citizens

An examination of juvenile detention facilities for delinquent citizens is relevant here. Numerous immigrant minors are detained in juvenile detention facilities under contract with the INS while they await the adjudication of their deportation or asylum hearings. However, in most cases, the only thing immigrant minors are guilty of is either their immigrant status, n108 or being suspected of being deportable. n109 In response to arguments by advocates of immigrant minors that these minors should not be detained in criminal juvenile detention centers, Justice Stevens, dissenting in Reno v. Flores, stated:

These juveniles do not want to be committed to institutions that the INS and the Court believe are 'good enough' for aliens simply because they conform to standards that are adequate for the incarceration of juvenile delinquents. They want the same kind of liberty that the Constitution guarantees similarly situated citizens. n110

Unfortunately, the standards of incarceration for juveniles are generally not met, and the conditions of criminal juvenile detention centers are often neither healthier nor safer than conditions in actual INS detention facilities.

A. Purposes & Standards of Detention Halls

Under California guidelines, a juvenile hall is specifically intended to provide temporary care for children pending court dispositions or transfers to another jurisdiction or agency. Such temporary care involves four basic functions: 1) secure physical care that prevents the damaging effects of confinement; 2) constructive individual and group activities, including a well-balanced school program; 3) counseling and guidance to help the child with any problem she or he may encounter in detention; and 4) study and observation to produce a professional report that provides a better understanding of the child to the probation department and the court. n111
At a minimum, every juvenile hall must provide each minor a place to: a) sleep; b) eat; c) study and go to school; d) play, both indoors and outdoors; e) visit with parents; f) talk in private with the police, the probation officer, the juvenile hall staff, and other concerned professional staff; g) obtain needed medical attention; h) attend to personal hygiene; and for i) worship. n112 A juvenile hall environment must also be designed to assure that a minor is guaranteed his or her individual dignity and privacy, and it must provide safety, protection, and proper supervision for each detained minor. n113

B. Overcrowding in Juvenile Detention Facilities

Despite the applicable standards, juvenile detention facilities continue to be far too overcrowded - to the detriment of the juvenile residents. It has been found that overcrowding increases disciplinary infractions, recidivism, escape attempts and violence in overcrowded facilities. n114 A 1986 report found that violent, gang-oriented environments control overcrowded detention facilities of the [*607] California Youth Authority (CYA). n115 The problem is so severe that CYA staff cannot protect its inmates from being beaten or intimidated by other inmates. n116 With limited resources, inappropriate facility design, and increased crowding, the CYA staff are incapable of stopping many fights and assaults. n117

At CYA detention facilities, there is generally one guard to watch over 50 or 60 inmates. n118 Some episodes of violence are so extreme in the CYA facilities, that a single guard is instructed to drop a tear gas grenade into the dormitory, and watch over the choking minors until more guard squads arrive to clear the dormitory. n119

One CYA juvenile detention facility, the Youth Training School (YTS) in Chino, California, is so violent that it is compared to an adult prison. n120 Security is very strict - nothing like what the Reno v. Flores Court envisioned when it stated that institutionalized custody for unaccompanied immigrant minors shall be provided in "an open type of setting without a need for extraordinary security measures." n121 As a show of force, guards who form tactical teams to break up disturbances drill with helmets and uniforms in front of the inmates, and helicopters are periodically brought in. Also, dogs are used to sniff out narcotics, and tasers are used to incapacitate abusive or disobedient inmates. n122 A former Assistant Superintendent of YTS described the difference between violence inside YTS and the streets of Los Angeles: "It's like the difference between shooting a gun inside or outside; there are more ricochets inside. You can't get away from people you don't like." n123

Besides the violence that they are subjected to, minors are not even ensured living arrangements mandated by law. Despite court decisions that prohibit the use of mattresses for overflow sleeping on floors, overcrowding continues to be so bad that sometimes as many as 80 minors will sleep on a gymnasium floor at the same time. n124

[*608] Immigrant minors are also disliked by other inmates. n125 With conditions such as these, immigrant minors are just as incapable of obtaining health care, education, and recreation, to which they are entitled by United States law, in juvenile detention centers as they are in INS detention facilities.

C. Recommendations for Overcrowding

Factors that contribute to overcrowding include increasing numbers of juvenile detainees, delays in transferring minors to disposition programs, population growth, and lengthy court continuances. Unfortunately, new juvenile hall construction is simply not affordable in many counties. n126

In July 1982, the California Youth Authority appointed a 22-member External Fact-Finding Committee on Juvenile Hall Overcrowding and Related Issues. Although this study is dated, it still provides a comprehensive look at overcrowding in juvenile detention centers, and offers realistic recommendations for remedying the problem. The committee's recommendations are particularly valuable because they can be enacted by inexpensive structural modifications, adjustments in the use of staff, and program options other than major remodeling or new construction. n127 Its recommendations are grouped into four general areas:

"1) allow more flexibility in the Youth Authority's policy of finding juvenile halls unsuitable for being overcrowded, provided that all health and safety standards are met; 2) retain the existing minimum space requirements in the juvenile hall standards; 3) develop information on alternative programs to reduce juvenile hall detention; 4) study the effects of overcrowding and recommend ways to reduce its bad effects on minors and juvenile hall programs." n128

If the above changes can be made, immigrant minors at risk of being indefinitely detained in juvenile detention centers may be able to at least receive the education, recreation, and medical and psychological attention that they deserve. Without such changes, it is highly improbable that immigrant minors in juvenile
detention centers will be protected from physical or psychological damage.

[*609]

V. International Standards for the Detention of Refugee Children

No international convention specifies rules for the treatment of unaccompanied refugee minors. This is primarily due to a desire not to interfere in matters which are essentially domestic in nature. For instance, Article 2(7) of the Charter of the United Nations states: "Nothing contained in the present Charter shall authorize the United Nations to intervene on matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter." n129 Hence, the Office of the United Nations High Commissioner for Refugees (UNHCR) does not have the legal ability to act on behalf of minors contrary to the territorial sovereign. n130

Therefore, nations generally apply the law of the state of the minor's residence for the time being - regardless of her connections to her home country - to govern the protective measures concerning the minor and her property. n131 In taking protective measures on behalf of the minor, adjudicators generally begin with the minor's best interests. To start elsewhere could conflict with public policy in public international law - since the best interests test is found in the Declaration of the Rights of the Child, the Draft Convention on the Rights of the Child, the Draft Declaration on Foster Placement and Adoption, and the Adoption and Child Abduction Conventions of the Hague Conference on Private International Law. The best interests test is also seen in the UNHCR Guidelines for Durable Solutions. n132

Although this is the logical place to start when determining the protective measures to be taken on behalf of a refugee minor, the best interests test lacks definition and criteria. There is no international agreement on the factors to consider in defining best interests, or on whose values to attach to the factors. n133 Perhaps some factors to consider are the minor's age and wishes, the family's wishes, the possibility of repatriation within the minor's childhood, the possibility of resettlement and happy placement, difficulties with family reunification, psychological bonding, and cultural issues. n134 Nonetheless, the value judgments and impressions of those responsible for determining the immigration or refugee status, or the custodial arrangement of immigrant minors, can potentially interfere with the application of the best interests test.

Although no international conventions specify rules for the treatment of refugee minors, such rules can be inferred from provisions in international conventions, documents and declarations or resolutions. n135 For instance, the Fourth Geneva Convention of 1949, and Protocols I and II of 1977, illustrate progress toward international standards for the treatment of unaccompanied refugee children. They "emphasize the general and special protection of children as members of the civilian population, the protection of family ties, the child's cultural environment and rights to education, personal respect and preferential treatment. The movement has been... towards a recognition that unaccompanied refugee and displaced minors have interests of their own to be taken into account...." n136

A. Recommendations for International Guidelines on Protecting the Psychological Welfare of Refugee Children

Although no formal United Nations conventions or declarations speak directly to the treatment of refugee minors in general, particularly while in detention facilities, United Nations organizations have been called upon to mobilize adequate assistance to unaccompanied minors in the areas of relief, education, health, and psychological rehabilitation. n137 Because protecting an immigrant minor's psychological welfare is possibly the most important goal in guarding the minor's overall well-being, special emphasis must be placed on establishing international standards for improving conditions in detention facilities, and access to psychological rehabilitation.

The psycho-social needs of refugee minors must be addressed at all stages of their respective refugee cases. n138 To fail to satisfy the [*611] psycho-social needs of refugee minors can be interpreted as psychological abuse, in which international institutions share responsibility. n139 Regarding international institutional responsibility to effectively protect the rights of refugee minors, it is vital to the child's psycho-social well-being to identify the factors that control the minor's ability to manage and adjust to past and current events and conditions. Institutions should consider the "overall context in which the children are functioning, the interaction between different systems, and the ways in which, individually and collectively, they have an impact on the children, will be most likely to secure a positive developmental outcome." n140

Furthermore, it is essential to the social and psychological development of an undocumented minor to give her the opportunity to freely express her views, even if, in some cases, her views are demands that are
impossible to meet. n141 The value of listening to minors' views is not limited simply to their value as suggestions for how decisions concerning their well being should be made.


The United Nations Convention on the Rights of the Child contains children's rights that have not previously been protected by an international treaty. Among those rights are the rights to identity, to foster care, to adoption, and to special treatment as a juvenile offender. n142 The Convention of the Rights of the Child also establishes that the child has rights of individual personality - rights particular to the individual, such as freedom of expression, religion, association, assembly, and the right to privacy - rather than rights of a group of immigrants or refugees. n143 This supports an argument that refugee children must be afforded individualized hearings and home studies to determine whether temporary custody with responsible unrelated adults would better protect these individual rights that refugee children enjoy under the Convention on the Rights of the Child.

[*612] The Convention on the Rights of the Child has significant consequences for the rights of refugee children. For instance, article 22, Paragraph 1 stipulates that accompanied and unaccompanied refugee minors are entitled to protection and assistance in order to enjoy the rights in the Convention and in other international human rights or humanitarian documents. n144 Paragraph 2 provides a means of tracing the refugee minor's parents or other family members, and for alternative care where no relatives can be found. n145 Although Paragraph 2 of the Convention does not specify if and when "alternative care" refers to institutionalized custody or the custody of an unrelated responsible adult, the position has been taken that it encompasses foster care and adoption set forth in articles 20 and 21 of the Convention. n146 Article 2 of the Convention promulgates that all of the Convention's rights shall apply to refugee children without discrimination.

VI. Conclusion

Most unaccompanied immigrant minors will be detained for at least a few days. It is imperative that these few days - or possibly months or years - in INS detention facilities not forever damage a child's psychological health. Upon entering the United States, immigrant children have already suffered more than most children and adults can even begin to comprehend. It is simply not fair to allow more abuse to come to them while in INS detention facilities, regardless of what their immigration or refugee status may be. Whatever their reasons for coming to the United States, they are still just children.

FOOTNOTE-1:


n2. Id.


n4. Id.


n6. Id.


n8. Id.

n9. Id. at 159.

n10. Id. at 160.

n11. Olivas, supra note 7, at 160.

n12. Id.


n16. Id.

n17. Flores v. Meese, 942 F.2d 1352, 1355 (9th Cir. 1991) [hereinafter Flores II] (en banc), rev'd, 113 S.Ct. 1439 (1993). This was confirmed by former Western Regional Commissioner Harold Ezell.


n19. Flores II, 942 F.2d at 1355.

n21. Flores I, 934 F.2d at 995-96; see also Reno v. Flores, 507 U.S. at 296-97. Deportable individuals are those who are caught after having fraudulently entered the United States, or those who have violated or failed to extend their visas. Excludable individuals are those who have never been granted leave to enter the United States. Jacqueline Bhabha, Deterring Refugees: The Use and Abuse of Detention in US Asylum Policy, 6 Immigr. & Nationality L. & Prac. 117, 118 (1992).

n22. 8 C.F.R. 242.24 provides as follows:

Detention and release of juveniles.

(a) Juveniles. A juvenile is defined as an alien under the age of eighteen (18) years.

(b) Release. Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to: (i) A parent; (ii) legal guardian; or (iii) adult relative (brother, sister, aunt, uncle, grandparent) who are not presently in INS detention, unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others.

In cases where the parent, legal guardian or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at an INS office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in Pgraph (b)(1) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in INS detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in INS detention or outside the United States, the juvenile may be released to such person as designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in Pgraph (b)(1) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the INS or an immigration judge.

n23. See Conditions of Minors in INS Detention, supra note 3, at 3.

n24. Id.

n25. Id. at 3-4 (citing statement by Harlingen, Texas INS District Director Omer Sewell, Apr. 1990).

n26. Id. at 4.

n27. The minor's release must satisfy 8 C.F.R. 242.24 (a) & (b).

n28. 8 C.F.R. 242.24(c).


n30. Reno v. Flores, 507 U.S. at 314 (citing Juvenile Care Agreement 178a).
n31. Flores II, at 942 F.2d. at 1356.
n32. Id. The INS specifically stated that, "as with adults, the decision of whether to detain or release a juvenile depends on the likelihood that the alien will appear for all future proceedings. However, with respect to juveniles a determination must also be made as to whose custody the juvenile should be released. On the one hand, the concern for the welfare of the juvenile will not permit release to just any adult. On the other hand, the Service has neither the expertise nor the resources to conduct home studies for placement of each juvenile released." 53 Fed. Reg. at 17449.
n33. Flores II, 942 F.2d. at 1363.
n34. Id. at 1355.

n35. Id. at 1363.
n36. Id.
n38. Id. at 201. The Court held that the fact that a child was previously in state custody did not matter because the state is not necessarily responsible for a child's well-being by virtue of having previously had custody of the child. Id.
n39. Id. However, in DeShaney, the court dealt with returning a child to a parent, rather than releasing a child to the custody of a responsible third party, which may pose a greater threat of liability to the state. In the latter situation, the state would have acted affirmatively to place the child in a home from which the child did not come, rather than returning the child to the same home. The court reasoned that by returning a child to the same home, the child would be in "no worse position than that in which he would have been had [the state] not acted at all." Id.
n42. See generally Holley & Lu, supra note 41; Cummings, supra note 41.
n43. All undocumented minors who were arrested and detained in the Western Region were strip searched immediately upon arrest, as well as after every visit with anyone other than their attorneys. Flores initiated a class action to enjoin the INS strip search policy arguing that it violated the Fourth Amendment prohibition against unreasonable searches and seizures. The United States granted summary judgment for the plaintiffs, stating that the policy's alleged purpose of confiscating weapons had turned up no contraband. The court prohibited future strip searches except upon reasonable suspicion. Flores v. Meese, 681 F.Supp. 665, 669 (C.D. Cal. 1988).
n44. Holley & Lu, supra note 41, at 21.
n45. Flores I, 934 F.2d. at 1014.
n46. Flores II, 942 F.2d. at 1357.
n47. The INS policy in effect when Flores was arrested allowed the release of alien minors to third party adults only under "unusual and extraordinary" circumstances. 8 C.F.R. 242.24(b)(4) (1984). This regulation did not permit minors to be released to adult relatives such as grandparents, siblings, aunts, or uncles. 8 C.F.R. 242.24(b)(1) (1984). Due to this litigation, the regulation was amended to include these blood relatives, but the "unusual and extraordinary" circumstances requirement still exists. 8 C.F.R., 242.24(b)(1) (1992). See also Erin Eileen Gorman, Reno v. Flores: The INS' Automatic Detention Policy for Alien Children, 7 Geo. Immigr. L.J. 435, 471 (1993).
n48. Gorman, supra note 47, at 436; see also Holley & Lu, supra note 41, at 21.
n49. Gorman, supra note 47, at 436.
n50. For more discussion on Reno v. Flores, see Nancy Burnell, Due Process Does Not Compel Pre-Hearing Release of Alien Juveniles to Adults Other Than Parents or Legal Guardians, Reno v. Flores, 113 S.Ct. 1439, 18 Suffolk Transn'tl L. Rev. 359 (1995); Denise E. Choquette, Reno v. Flores and the Supreme Court's Continuing Trend Toward

For more discussion on Flores v. Meese (Flores II), see Judge J. Daniel Dowell et al., Protection and Custody of Children in the United States Immigration Court Proceedings, 16 Nova L. Rev. 1285 (1992); Michael S. Satow, A Journey Through the Fog: Due Process Analysis of I.N.A. Section 242(a)(2), 5 Geo. Immigr. L.J. 677 (1991); Lawyers Committee for Human Rights, The Detention of Asylum Seekers in the United States: A Cruel and Questionable Policy 1989. It should be noted that Flores II was the appellate court opinion precedent to the Supreme Court opinion in Reno v. Flores. Once again, the action began when a class of alien minors challenged the INS regulation governing the release of detained alien minors. The United States District Court for the Central District of California granted summary judgment to the alien minors. An appeal was taken where a panel of the Court of Appeals in Flores I reversed the district court decision. On rehearing en banc in Flores II, the Court of Appeals ruled that the INS regulation: (1) did not facially violate the minors' substantive or procedural due process, and (2) was within the scope of the Attorney General's statutory discretion to proceed with custody over alien minors.

n52. Id. at 298 (citing Juvenile Care Agreement 176a).
n53. Id. (citing Juvenile Care Agreement 173a).
n54. Id. (citing Juvenile Care Agreement 157a).
n55. Id. (citing Juvenile Care Agreement 159a, 178a-185a).
n56. Id. at 302.
n57. Id. at 303 (citation omitted).
n58. Id. at 303-04.
n59. Id. at 304.
n60. Id.
n61. Id. at 304-05. Regarding public funds and administrative capacity, the INS asserted that it did not have the means to investigate the living environment of every prospective, unrelated, adult custodian. Richard A. Karoly, Flores v. Meese: INS' Blanket Detention of Minors Invalidated, 22 Golden Gate U. L. Rev. 183, 191 (1992).
n63. Id.; see also Bhabha, supra note 21, at 118.
n64. Gorman, supra note 47, at 440.
n65. Olivas, supra note 7, at 160.
n66. Bhabha, supra note 21, at 118.
n67. Olivas, supra note 7, at 160.
n68. Taylor, supra note 50, at 1116.
n69. Id. at 1115.
n71. Conditions of Minors in INS Detention, supra note 3, at 5.
n72. Id. at 6.
n73. Gorman, supra note 47, at 471 (citing testimony of Paul DeMuro, consulate from the United States Justice Department's Office of Juvenile Justice and Delinquency Prevention).
n74. Id.
n75. A lack of access to legal counsel or other means to prepare their cases is a common complaint of all detainees, adults and children alike.
n76. Conditions of Minors in INS Detention, supra note 3, at 4; see also Olivas, supra note 8.

n77. International Educational Services is an organization under contract with the INS to operate detention facilities. Conditions of Minors in INS Detention, supra note 3, at 2.

n78. Id. at 4.

n79. Olivas, supra note 7, at 162.

n80. Bhaba, supra note 21, at 118.

n81. Olivas, supra note 7, at 162.

n82. Previously, the INS' detention practices also included subjecting minors to strip and body cavity searches. The district court in Flores I ordered the INS to stop strip searching minors unless it reasonably suspected that the minors were concealing weapons or contraband. Also, minors were detained indefinitely, deprived of education, recreation, and visitation rights, and detained with unrelated adult men and women. In Flores I, the INS agreed to provide education, recreation, and reasonable visitation rights, and stop housing minors with unrelated adults of both sexes. Flores I, 934 F.2d. at 1014 (Fletcher, J., dissenting).


n85. Gorman, supra note 47, at 471 n.214.


n88. Flores II, 942 F.2d at 1367-68 (quoting from Flores I, 934 F.2d at 1014 (Fletcher, J., dissenting)).

n89. Id. at 1368 (citation omitted).

n90. Reno v. Flores, 507 U.S. at 324-28 (Stevens, J., dissenting). Justice Stevens cites the Juvenile Justice and Delinquency Prevention Act of 1974 which authorized release of juveniles charged with crimes "to his parents, guardian, custodian, or other responsible party." Id. at 326 (citing 18 U.S.C. 5034 (1988)). Justice Stevens also listed a number of model acts and standards which advocate such a release policy; see also Conditions of Minors in INS Detention, supra note 3, at 2.


n92. D'Angelo, supra note 50, at 475 (citing United States v. Salerno, 481 U.S. 739, 747 (1987)); see also Bell v. Wolfish, 441 U.S. 520 (1979) (holding that placement of two detainees in a room designed for single occupancy was not meant as punishment). However, it should be noted that U.S. v. Salerno addresses legislation governing the pretrial detention of arrestees charged with serious felonies, and not the detention of unaccompanied immigrant minors whose only violation was that of an immigration law. Salerno, 481 U.S. at 739. Moreover, the "pressing societal problem" in U.S. v. Salerno was the possibility of crimes committed by felons on release, and not illegal immigration into the United States. Id. Thus, one can presume that the "pressing societal problem" includes high levels of legal and illegal immigration into the United States.

n93. D'Angelo, supra note 50, at 464.

n94. Id. at 482.

n95. Id.

n96. Id. at 483.

n97. Salerno, 481 U.S. at 748.


n99. D'Angelo, supra note 50, at 475.
n100. *Flores II*, 942 F.2d at 1363.
n101. D’Angelo, supra note 50, at 475.
n102. *Flores II*, 942 F.2d at 1363.
n104. D’Angelo, supra note 50, at 476-77.
n106. D’Angelo, supra note 50, at 482.
n107. Gorman, supra note 47, at 436; see also Holley & Lu, supra note 41, at 21.
n108. *Flores I*, 934 F.2d at 1014 (Fletcher, J., dissenting).
n112. Id. at 7.
n113. Id. *Section 509 of the Welfare and Institutions Code*, enacted in 1969, makes it mandatory for the Youth Authority to adopt and apply minimum standards for juvenile hall operation and maintenance. Id. at 4.
n116. Id. at 12.
n117. Id.
n118. Id.
n119. Id.
n120. Lerner, supra note 115, at 11.
n122. Lerner, supra note 115, at 26-27.
n123. Id. at 29.
n124. Id. at 13; see also *Rutherford v. Pitchess*, 713 F.2d. 1416 (9th Cir. 1983); *Lareau v. Mason*, 651 F.2d 96 (2nd Cir. 1981); *Capps v. Attyeh*, 495 F. Supp. 802 (Or. 1980); Manney v. Cabell, CV75-3305 (C.D. Cal. 1979).
n125. Lerner, supra note 115, at 27.
n126. See *Overcrowding In Juvenile Detention Facilities and Methods to Relieve Its Adverse Effects*, supra note 114, at 5.
n127. Id. at 6.
n128. Id. at 5.
n130. Id. at 208.
n133. Pask, supra note 129, at 212.
n134. Id. at 217.
n135. Id. at 199. The treatment of unaccompanied refugee minors can also be inferred from the family and child welfare law of the country in which the minor seeks refuge. Id. Some countries apply their own laws concerning children to refugee or alien minors. The countries that ignore their own laws presumably do so: a) because alien minors are refugees, not local citizens, and thus not part of the national responsibility; and b) out of concern that local child protection systems applied to alien minors would jeopardize their refugee status if they had any. Id. at 200.
n136. Id. at 206-7.

n138. International Catholic Child Bureau, Recommendations of the Seminar on the Psychological Well-Being of Refugee Children organized by International Catholic Child Bureau, 4 Int'l J. Refugee L. 285, n.2 (1992). The International Catholic Child Bureau recommends that, in order to sufficiently address the psycho-social needs of refugee minors at all stages of their asylum cases, nations must decrease the violence in refugee camps. They may do so by regrouping refugees along ethnic and social lines, and by developing programs that work to maximize protection to refugee minors (and women).


n140. Id. at 95.


n146. Id.